A/54/18

United Nations

Report of the Committee on the Elimination of Racial Discrimination

Fifty-fourth session (1–19 March 1999)
Fifty-fifth session (2–27 August 1999)

General Assembly
Official Records
Fifty-fourth Session
Supplement No. 18 (A/54/18)

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United Nations • New York, 1999

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ISSN 0252-1261

[29 September 1999]

Contents

Chapter		Paragraphs	Page
	Letter of transmittal		vii
I.	Organizational and related matters	1–15	1
	A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination	1–2	1
	B. Sessions and agenda	3–4	1
	C. Membership and attendance	5–7	1
	D. Officers of the Committee	8	2
	E. Cooperation with the International Labour Organization and the United Nations Educational, Scientific and Cultural Organization	9–10	2
	F. Other matters	11–14	2
	Decision 4 (55)		3
	G. Adoption of the report	15	3
II.	Prevention of racial discrimination, including early warning and urgent procedures	16–24	4
	A. Decisions adopted by the Committee at its fifty-fourth session	21	4
	Decision 1 (54) on Yugoslavia		5
	Decision 2 (54) on Australia		5
	Decision 3 (54) on Rwanda		7
	Decision 4 (54) on the Democratic Republic of the Congo		7
	Decision 5 (54) on the Sudan		8
	B. Statement adopted by the Committee at its fifty-fourth session	22	9
	Statement on the human rights of the Kurdish people		9
	C. Decisions adopted by the Committee at its fifty-fifth session	23	9
	Decision 1 (55) on Kosovo (Federal Republic of Yugoslavia)		10
	Decision 2 (55) on Australia		10
	Decision 3 (55) on the Democratic Republic of the Congo		11
	D. Statement adopted by the Committee at its fifty-fifth session	24	11
	Statement on Africa		11
III.	Consideration of reports, comments and information submitted by States parties under article 9 of the Convention	25-544	13

Austria 26–45 1
Republic of Korea 46–66 1
Finland 67–87 1
Portugal 88–107 1
Congo 108–115 1
Italy 116–136 1
Peru 137–166 2
Syrian Arab Republic 167–184 2
Costa Rica 185–207 2
Kuwait 208–229 2
Mongolia 230–252 2
Haiti 253–271 2
Romania 272–290 3
Antigua and Barbuda 291–293 3
Islamic Republic of Iran 294–313 3
Maldives 314–320 3
Mauritania 321–336 3
Iraq 337–361 3
Central African Republic 362–364 3
Chile 365–383 3
Latvia 384–414 3
Uruguay 415–435 4
Mozambique 436–438 4
Kyrgyzstan 439–453 4
Colombia 454–481 4
Azerbaijan 482–503 4
Dominican Republic 504–522 4
Guinea 523–544 4
IV. Consideration of communications under article 14 of the Convention 545–552 5
V. Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention 553–558 5
VI. Action taken by the General Assembly at its fifty-third session 559–562 5
A. Annual report submitted by the Committee on the Elimination of Racial Discrimination under article 9, paragraph 2, of the Convention 560–561 5

B. Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights 562 54

VII. Submission of reports by States parties under article 9 of the Convention 563–570 55

A. Reports received by the Committee 563 55

B. Reports not yet received by the Committee 564 57

C. Action taken by the Committee to ensure submission of reports by States parties 565–570 65

VIII. Third Decade to Combat Racism and Racial Discrimination; World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance 571–574 67

Decision 5 (55) 67

IX. Overview of the methods of work of the Committee 575 69

Annexes

I. Status of the Convention 70

A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination (155), as at 27 August 1999 70

B. States parties that have made the declaration under article 14, paragraph 1, of the Convention (28), as at 27 August 1999 74

C. States parties that have accepted the amendments to the Convention adopted at the fourteenth meeting of States parties (24), as at 27 August 1999 75

II. Agendas of the fifty-fourth and fifty-fifth sessions 76

A. Fifty-fourth session 76

B. Fifty-fifth session 76

III. Decisions of the Committee on the Elimination of Racial Discrimination under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination 78

A. Fifty-fourth session 78

B. Fifty-fifth session 91

IV. Documents received by the Committee at its fifty-fourth and fifty-fifth sessions in conformity with article 15 of the Convention 102

V. General recommendation concerning article 1 of the Convention 103

VI. Country rapporteurs 104

A. Country rapporteurs for reports of States parties considered by the Committee at its fifty-fourth and fifty-fifth sessions 104

B. Country rapporteurs for States parties which have seriously overdue reports and which were considered under the review procedure by the Committee at its fifty-fourth and fifty-fifth sessions 105

C. Country rapporteurs for States parties considered under prevention of racial discrimination, including early warning measures and urgent action procedures, by the Committee at its fifty-fourth and fifty-fifth sessions 106

VII. List of documents issued for the fifty-fourth and fifty-fifth sessions of the Committee 107

VIII. Comments of the Government of Australia on decision 2 (54) adopted by the Committee on the Elimination of Racial Discrimination on the special report of Australia 110

IX. Comments of the Government of the Islamic Republic of Iran on the concluding observations adopted by the Committee on the Elimination of Racial Discrimination on the thirteenth, fourteenth and fifteenth periodic reports of the Islamic Republic of Iran 113

X. Comments of the Government of Latvia on the concluding observations adopted by the Committee on the Elimination of Racial Discrimination on the initial, second and third periodic reports of Latvia 114

XI. Comments of the Government of Mauritania on the concluding observations adopted by the Committee on the Elimination of Racial Discrimination on the initial to fifth periodic reports of Mauritania 115

Letter of transmittal

27 August 1999

Sir,

In the letter transmitting the Committee on the Elimination of Racial Discrimination's last annual report, I drew attention to a decision in the first chapter recommending the convening of winter sessions of the Committee in New York in accordance with article 10, paragraph 4, of the Convention. A significant number of States parties to the Convention, virtually all from developing countries, lack diplomatic representation in Geneva while maintaining Permanent Missions in New York. Our experience has demonstrated that many of these States are frequently unable to send representatives to Geneva to present their reports and engage in dialogue with the Committee. I recall this decision because our arguments have not yet been addressed and the Committee has now adopted a further decision, 4 (55), to be found in the present chapter I.

As you are aware, the Committee at present includes only one expert from Africa. The Committee hopes that when the States parties meet early in 2000 to elect members to serve a new term of office their attention will be drawn to article 8, paragraph 1, of the Convention, which stipulates that consideration should be given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.

The Committee is alarmed that in many regions of the world political tensions find expression in racial and ethnic conflict. It takes such action as its mandate permits to draw attention to impending ethnic conflict. Chapter II reports our decisions and statements concerning five States parties, the human rights of the Kurdish people, the abuses in Kosovo (Federal Republic of Yugoslavia) and the problems in some African States.

Chapter III reports on our examination of the reports and information received from States parties. Under the Convention, periodic reports are due every two years, but some States are seriously overdue in their submission of reports. Since it may be important to consider the application of the Convention in non-reporting States, the Committee undertakes a review when a report is overdue by five years or more. By the end of 1998, 95 States had been scheduled for review. In 35 instances, States responded by submitting the overdue report, while others requested deferment to enable them to prepare a report. In 53 instances application of the Convention in a State has been considered in the absence of a report; sometimes, the State has been represented, sometimes it has not. As can be seen from chapter VII, section A, of this report, despite the Convention's relatively short reporting cycle, the Committee has no backlog of reports awaiting consideration.

His Excellency Mr. Kofi **Annan**
Secretary-General of the United Nations
New York

Chapter VIII includes information on the Committee's contribution to preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to be convened in 2001.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Mahmoud **Aboul-Nasr**
Chairman
Committee on the Elimination of Racial Discrimination

Chapter I
Organizational and related matters

A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination

1. As at 27 August 1999, the closing date of the fifty-fifth session of the Committee on the Elimination of Racial Discrimination, there were 155 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted by the General Assembly in resolution 2106 A (XX) of 21 December 1965 and opened for signature and ratification in New York on 7 March 1966. The Convention entered into force on 4 January 1969 in accordance with the provisions of its article 19.

2. By the closing date of the fifty-fifth session, 28 of the 155 States parties to the Convention had made the declaration envisaged in article 14, paragraph 1, of the Convention. Article 14 of the Convention entered into force on 3 December 1982, following the deposit with the Secretary-General of the tenth declaration recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals who claim to be victims of a violation by the State party concerned of any of the rights set forth in the Convention. Lists of States parties to the Convention and of those which have made the declaration under article 14 are contained in annex I to the present report, as is a list of the 24 States parties that have accepted the amendments to the Convention adopted at the fourteenth meeting of States parties, as at 27 August 1999.

B. Sessions and agenda

3. The Committee on the Elimination of Racial Discrimination held two regular sessions in 1999. The fifty-fourth (1304th-1332nd meetings) and fifty-fifth (1333rd-1371st meetings) sessions were held at the United Nations Office at Geneva from 1 to 19 March and from 2 to 27 August 1999, respectively.

4. The agendas of the fifty-fourth and fifty-fifth sessions, as adopted by the Committee, are reproduced in annex II.

C. Membership and attendance

5. In accordance with the provisions of article 8 of the Convention, the States parties held their seventeenth meeting at United Nations Headquarters on 14 January 1998[1] and elected nine members of the Committee from among the candidates nominated to replace those whose term of office was due to expire on 19 January 1998.

6. The list of mebers of the Committee for 1998-2000, including those elected or re-elected on 14 January 1998, is as follows:

Name of member	*Country of nationality*	*Term expires on 19 January*
Mr. Mahmoud Aboul-Nasr**	Egypt	2002
Mr. Michael Parker Banton**	United Kingdom of Great Britain and Northern Ireland	2002
Mr. Theodoor van Boven	Netherlands	2000
Mr. Ion Diaconu	Romania	2000
Mr. Eduardo Ferrero Costa	Peru	2000
Mr. Ivan Garvalov	Bulgaria	2000
Mr. Régis de Gouttes**	France	2002
Mr. Carlos Lechuga Hevia**	Cuba	2002
Ms. Gay McDougall*	United States of America	2002
Mr. Peter Nobel*	Sweden	2002
Mr. Yuri A. Rechetov	Russian Federation	2000
Mrs. Shanti Sadiq Ali	India	2000
Mr. Agha Shahi**	Pakistan	2002
Mr. Michael E. Sherifis**	Cyprus	2002
Mr. Luis Valencia Rodriquez	Ecuador	2000
Mr. Rüdiger Wolfrum**	Germany	2002
Mr. Mario Jorge Yutzis	Argentina	2000
Ms. Zou Deci	China	2000

* Elected on 14 January 1998.

** Re-elected on 14 January 1998.

7. All the members of the Committee attended the fifty-fourth session with the exception of Mr. Wolfrum. Mr. Ferrero Costa attended the first two weeks of the fifty-fourth session. All members attended the fifty-fifth session with the exception of Mr. Nobel. Mr. Ferrero Costa and Mr. Wolfrum attended the first two weeks of the fifty-fifth session.

D. Officers of the Committee

8. At its 1245th meeting (fifty-second session), on 2 March 1998, the Committee elected the following officers for a term of two years (1998-2000), in accordance with article 10, paragraph 2, of the Convention:

Chairman:
Mr. Mahmoud Aboul-Nasr

Vice-Chairmen:
Mr. Ion Diaconu
Mr. Michael E. Sherifis
Mr. Mario Jorge Yutzis

Rapporteur:
Mr. Michael Parker Banton

E. Cooperation with the International Labour Organization and the United Nations Educational, Scientific and Cultural Organization

9. In accordance with Committee decision 2 (VI) of 21 August 1972 concerning cooperation with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO),[2] the two organizations were invited to attend the sessions of the Committee.

10. Reports of the ILO Committee of Experts on the Application of Conventions and Recommendations, submitted to the International Labour Conference, were made available to the members of the Committee on the Elimination of Racial Discrimination, in accordance with arrangements for cooperation between the two Committees. The Committee took note with appreciation of the reports of the Committee of Experts, in particular of those sections which dealt with the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), as well as other information in the reports relevant to its activities.

F. Other matters

11. At the 1304th meeting, on 1 March 1999, the United Nations Deputy High Commissioner for Human Rights opened the fifty-fourth session of the Committee. He discussed the historical development of the principle of non-discrimination in international law, making reference to the Universal Declaration of Human Rights and the Convention. The Deputy High Commissioner also cited the need for United Nations organs to cooperate with the ILO and UNESCO to eliminate racial discrimination in the field of employment and access to education, respectively. He also referred to the Committee's General Comment No. XVII which recommends that States parties establish national commissions or other appropriate bodies to provide protection against racial discrimination. The Deputy High Commissioner applauded the Committee's decision, taken at its forty-fifth session, to include prevention of racial discrimination as a regular agenda item, stating that the challenge for the twenty-first century lay in preventive measures to be taken. He also encouraged the Committee to continue to be significantly involved in the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the World Conference itself (see CERD/C/SR.1304).

12. At the 1350th meeting (fifty-fifth session), on 12 August 1999, the United Nations High Commissioner for Human Rights addressed the Committee. She thanked the Committee for its contributions to date regarding the preparations for the upcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. She indicated that the involvement of the Committee in the process of preparing the World Conference, and its participation in the Conference itself, were essential. She also commended the Committee's efforts to take a preventive approach to racial discrimination. The High Commissioner indicated that she was taking steps to strengthen the resources accorded to treaty bodies through voluntary contributions and, in this regard, the Committee indicated its support for her efforts to launch the draft plan of action for strengthening the implementation of the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see CERD/C/SR.1350).

13. At its 1354th meeting (fifty-fifth session), on 16 August 1999, the Committee adopted amendments to its general guidelines regarding the form and contents of reports to be submitted by States parties under article 9, paragraph

1, of the Convention (CERD/C/70/Rev.3). A revised version of the general guidelines is to be issued to reflect these amendments.

14. At its 1370th meeting (fifty-fifth session), on 26 August 1999, the Committee adopted decision 4 (55), in which it requested that its fifty-eighth session in March 2001 be held at United Nations Headquarters in New York.

Decision regarding organizational matters adopted by the Committee at its fifty-fifth session

Decision 4 (55)

The Committee on the Elimination of Racial Discrimination,

Recalling that article 10, paragraph 4, of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the meetings of the Committee shall normally be held at United Nations Headquarters,

Reaffirming its decision 8 (53), taken after having considered the Secretary-General's estimate of financial implications,

Realizing that some States parties, especially developing countries in Africa, Asia and Latin America, maintain diplomatic missions in New York but not at Geneva, and that some of these States encounter financial and other difficulties in attending the meetings of the Committee when their reports are to be examined at Geneva,

Realizing further that these States have difficulty in engaging in a dialogue with the Committee,

Noting that meetings of other treaty bodies are held both at Geneva and in New York,

Also recalling that for its first eighteen years the Committee met regularly in New York,

1. *Decides* that, in order to discharge its responsibilities under the Convention, it will hold its fifty-eighth session in March 2001 at United Nations Headquarters in New York;

2. *Requests* the General Assembly to take appropriate measures to implement this decision.

1370th meeting
26 August 1999

G. Adoption of the report

15. At its 1371st meeting, on 27 August 1999, the Committee adopted its annual report to the General Assembly.

Chapter II
Prevention of racial discrimination, including early warning and urgent procedures

16. The Committee decided at its forty-first session to establish this item as one of its regular and principal agenda items.

17. At its forty-second session (1993), the Committee noted the conclusion adopted by the fourth meeting of persons chairing the human rights treaty bodies that:

> "... the treaty bodies have an important role in seeking to prevent as well as to respond to human rights violations. It is thus appropriate for each treaty body to undertake an urgent examination of all possible measures that it might take, within its competence, both to prevent human rights violations from occurring and to monitor more closely emergency situations of all kinds arising within the jurisdiction of States parties. Where procedural innovations are required for this purpose, they should be considered as soon as possible."(A/47/628, annex, para. 44)

18. As a result of its discussion of that conclusion of the meeting of chairpersons, the Committee, at its 979th meeting, on 17 March 1993, adopted a working paper to guide it in its future work concerning possible measures to prevent, as well as more effectively respond to, violations of the Convention.[3] The Committee noted in its working paper that efforts to prevent serious violations of the International Convention on the Elimination of All Forms of Racial Discrimination would include the following:

(a) *Early-warning measures*: these would be aimed at addressing existing problems so as to prevent them from escalating into conflicts and would also include confidence-building measures to identify and support structures to strengthen racial tolerance and solidify peace in order to prevent a relapse into conflict in situations where it has occurred. In that connection, criteria for early warning could include some of the following concerns: the lack of an adequate legislative basis for defining and criminalizing all forms of racial discrimination, as provided for in the Convention; inadequate implementation of enforcement mechanisms, including the lack of recourse procedures; the presence of a pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other officials; a significant pattern of racial discrimination evidenced in social and economic indicators; and significant flows of refugees or displaced persons resulting from a pattern of racial discrimination or encroachment on the lands of minority communities;

(b) *Urgent procedures*: these would aim at responding to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention. Possible criteria for initiating an urgent procedure could include the presence of a serious, massive or persistent pattern of racial discrimination; or that the situation is serious and there is a risk of further racial discrimination.

19. At its 1028th and 1029th meetings, on 10 March 1994, the Committee considered possible amendments to its rules of procedure which would take into account the working paper it had adopted in 1993 on the prevention of racial discrimination, including early warning and urgent procedures. During the discussions which followed, the view was expressed that it was too early to make changes in the rules of procedure in order to take account of procedures adopted only very recently. There was a risk that the Committee might be locking itself into rules which would soon no longer fit its needs. It would, therefore, be better for the Committee to have more experience with the procedures in question and to amend its rules at a later date on the basis of that experience. At its 1039th meeting, on 17 March 1994, the Committee decided to postpone to a later session further consideration of proposals to amend its rules of procedure.

20. The following sections describe decisions adopted and further action taken by the Committee at its fifty-fourth and fifty-fifth sessions within the framework of its efforts to prevent racial discrimination. At earlier sessions the Committee considered the situation in the following States parties under this agenda item: Algeria, Bosnia and Herzegovina, Burundi, Croatia, Cyprus, Democratic Republic of the Congo, Israel, Liberia, Mexico, Papua New Guinea, Russian Federation, Rwanda, the former Yugoslav Republic of Macedonia and Yugoslavia.

A. Decisions adopted by the Committee at its fifty-fourth session

21. At its fifty-fourth session, the Committee considered the situation in Australia, the Czech Republic, the Democratic Republic of the Congo, Rwanda, the Sudan and

Yugoslavia. At the Committee's request, special reports were submitted by Australia (CERD/C/347), the Czech Republic (CERD/C/348) and Yugoslavia (CERD/C/364). The Committee adopted the decisions set out below with respect to these States parties, with the exception of the Czech Republic, for which it decided to further consider the issues raised when the Czech Republic submitted its next periodic report (see CERD/C/SR.1332).

Decision 1 (54) on Yugoslavia

1. In its decision 3 (53) adopted on 17 August 1998 at its fifty-third session, the Committee had expressed its deep concern about the persisting grave violations of basic human rights occurring in Kosovo and had requested the Government of the Federal Republic of Yugoslavia to submit additional information about the attempts that had been made to achieve a peaceful solution to the situation. On the basis of the report submitted by the State party (CERD/C/364), the Committee re-examined the situation in Kosovo under its early warning and urgent action procedures at its fifty-fourth session and adopted the following decision.

2. The Committee reaffirms its earlier decisions and its concluding observations of 30 March 1998 concerning Yugoslavia and refers to its general recommendation XXI (48) of 8 March 1996. It further notes Security Council resolution 1203 (1998) of 24 October 1998.

3. In the light of the current tragic events occurring in Kosovo, the Committee expresses its appreciation to the State party for having submitted additional information as requested by the Committee and having contributed to a continuing dialogue with the Committee.

4. However, the Committee notes with dissatisfaction the apparent one-sided characterization of the conflict in its report. The State party, in its report as well as in its oral statements, made serious allegations of human rights violations committed by what was therein referred to as a terrorist organization, generally known as the Kosovo Liberation Army (KLA). There was no willingness from the side of the State party to acknowledge that some of its present and past actions might have contributed to the escalation of the conflict or its responsibility concerning the disproportionate use of force by the State party's law enforcement agencies and the military against the Albanian population in Kosovo. The Committee emphasizes that, according to information available to it from the United Nations and other sources, it is an established fact that grave human rights violations have been committed also by the State party. The Committee, while condemning all forms of terrorist activity, reiterates its position that the State party's reference to the state of insecurity and terrorism cannot in any way justify racial discrimination, including acts of violence and intimidation, against a particular ethnic group.

5. Noting the State party's assurances of its willingness to engage in a meaningful dialogue with the leadership of the Albanian community in Kosovo, the Committee calls upon the State party and other actors involved to adopt concrete and serious measures to this end, in order to achieve a just and peaceful solution to the situation. The solution should include a status of autonomy at the highest level for the province of Kosovo and respect for the territorial integrity of the State party.

6. For this purpose, the Committee finds that it is in the self-interest of the peoples of the afflicted area, as well as of the State party, that confidence is restored and that this can only be achieved by according full and immediate respect to all human rights, including those protecting equality and non-discrimination, as well as to the norms of international humanitarian law and the rule of law.

1326th meeting
16 March 1999

Decision 2 (54) on Australia*

1. Acting under its early warning procedures, the Committee adopted decision 1(53) on Australia on 11 August 1998 (A/53/18, para. 22), requesting information from the State party regarding three areas of concern: proposed changes to the 1993 Native Title Act; changes of policy as to Aboriginal land rights; and changes in the position or function of the Aboriginal and Torres Strait Islander Social Justice Commissioner. The Committee welcomes the full and thorough reply of the Government of Australia to this request for information (CERD/C/347). The Committee also appreciates the dialogue with the delegation from the State party at the Committee's 1323rd and 1324th meetings to respond to additional questions posed by the Committee in regard to the State party's submission.

2. The Committee received similarly detailed and useful comments from the Acting Aboriginal and Torres Strait Islander Social Justice Commissioner of the Australian Human Rights and Equal Opportunity Commission, the Aboriginal and Torres Strait Islander Commission and members of Parliament.

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* Comments of the Government of Australia were submitted on decision 2 (54) of the Committee pursuant to article 9, paragraph 2, of the Convention and are reproduced in annex VIII.

3. The Committee recognizes that, within the broad range of discriminatory practices that have long been directed against Australia's Aboriginal and Torres Strait Islander peoples, the effects of Australia's racially discriminatory land practices have endured as an acute impairment of the rights of Australia's indigenous communities.

4. The Committee recognizes further that the land rights of indigenous peoples are unique and encompass a traditional and cultural identification of the indigenous peoples with their land that has been generally recognized.

5. In its concluding observations on the previous report of Australia, the Committee welcomed the attention paid by the Australian judiciary to the implementation of the Convention (A/49/18, para. 540). The Committee also welcomed the decision of the High Court of Australia in the case of *Mabo v. Queensland*, noting that, in recognizing the survival of indigenous title to land where such title had not otherwise been validly extinguished, the High Court case constituted a significant development in the recognition of indigenous rights under the Convention. The Committee welcomed, further, the Native Title Act of 1993, which provided a framework for the continued recognition of indigenous land rights following the precedent established in the *Mabo* case.

6. The Committee, having considered a series of new amendments to the Native Title Act, as adopted in 1998, expresses concern over the compatibility of the Native Title Act, as currently amended, with the State party's international obligations under the Convention. While the original Native Title Act recognizes and seeks to protect indigenous title, provisions that extinguish or impair the exercise of indigenous title rights and interests pervade the amended Act. While the original 1993 Native Title Act was delicately balanced between the rights of indigenous and non-indigenous title holders, the amended Act appears to create legal certainty for Governments and third parties at the expense of indigenous title.

7. The Committee notes, in particular, four specific provisions that discriminate against indigenous title holders under the newly amended Act. These include the Act's "validation" provisions; the "confirmation of extinguishment" provisions; the primary production upgrade provisions; and restrictions concerning the right of indigenous title holders to negotiate non-indigenous land uses.

8. These provisions raise concerns that the amended Act appears to wind back the protections of indigenous title offered in the *Mabo* decision of the High Court of Australia and the 1993 Native Title Act. As such, the amended Act cannot be considered to be a special measure within the meaning of articles 1(4) and 2(2) of the Convention and raises concerns about the State party's compliance with articles 2 and 5 of the Convention.

9. The lack of effective participation by indigenous communities in the formulation of the amendments also raises concerns with respect to the State party's compliance with its obligations under article 5(c) of the Convention. Calling upon States parties to "recognize and protect the rights of indigenous peoples to own, develop, control and use their common lands, territories and resources," the Committee, in its general recommendation XXIII, stressed the importance of ensuring "that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent."[4]

10. While welcoming the State party's recognition of the important role that has been played by the Human Rights and Equal Opportunity Commission, the Committee also notes with concern the State party's proposed changes to the overall structure of the Commission, abolishing the position of the Aboriginal and Torres Strait Islander Social Justice Commissioner and assigning those functions to a generalist Deputy President. The Committee strongly encourages the State party to consider all possible effects of such a restructuring, including whether the new Deputy President would have sufficient opportunity to address in an adequate manner the full range of issues regarding indigenous peoples that warrant attention. Consideration should be given to the additional benefits of an appropriately qualified specialist position to address these matters, given the continuing political, economic and social marginalization of the indigenous community of Australia.

11. The Committee calls on the State party to address these concerns as a matter of utmost urgency. Most importantly, in conformity with the Committee's general recommendation XXIII concerning indigenous peoples, the Committee urges the State party to suspend implementation of the 1998 amendments and reopen discussions with the representatives of the Aboriginal and Torres Strait Islander peoples with a view to finding solutions acceptable to the indigenous peoples and which would comply with Australia's obligations under the Convention.

12. In the light of the urgency and fundamental importance of these matters, and taking into account the willingness expressed by the State party to continue the dialogue with the Committee over these provisions, the Committee decides to keep this matter on its agenda under

its early warning and urgent action procedures to be reviewed again at its fifty-fifth session.

1331st meeting
18 March 1999

Decision 3 (54) on Rwanda

1. The Committee recalls its earlier decisions on Rwanda under the early warning and urgent action procedures, notably its decision 5 (53) of 19 August 1998, which it reconfirms.

2. The Committee is aware that the security conditions in the country are closely linked with the security conditions in the Great Lakes region as a whole. In this connection the Committee is profoundly disturbed by the flow of arms into and within the Central African subregion, which is a major cause of insecurity and instability. The Committee repeats its call on all States to enforce arms embargos in the region.

3. The Committee remains deeply concerned at the continued serious violations of human rights and international humanitarian law in the country, and notably of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, in particular those set out in article 5, paragraphs (a) and (b), relating to the right to equal treatment before the tribunals and the right to security of person and the protection by the State against violence or bodily harm.

4. The Committee supports and encourages the efforts of the Government of Rwanda to prosecute gross violations of human rights and international humanitarian law committed by certain parts of its armed forces and stresses the need to increase the capacity of the Rwandan Patriotic Army to conduct internal investigations and bring accused persons to trial with due respect for basic fair trial guarantees.

5. The Committee welcomes progress in the administration of justice and the growing number of judges, prosecutors and defence lawyers taking part in administering justice, but it is aware of the immense needs and problems to meet the requirements of an expeditious, effective and fair justice system. The Committee appeals to the United Nations, Governments, as well as other organs of civil society, to continue to help strengthening the justice system of Rwanda.

6. The Committee repeats its regret that the mandate of the United Nations Human Rights Field Operation in Rwanda has come to an end and calls again on the State party and the United Nations to renew on an urgent basis their discussions aimed at ensuring an international monitoring presence in the country.

7. The Committee urges the State party to take all necessary measures to expedite the creation of the long-awaited National Human Rights Commission which should be an independent institution in accordance with the international principles relating to the development of independent, broadly based and pluralistic national institutions for the promotion and protection of human rights.

8. The Committee welcomes the readiness of the State party to continue the dialogue with the Committee and stresses the need that the situation in the country be further and thoroughly examined in the light of its earlier decisions and on the basis of the twelfth periodic report (comprising also the eighth, ninth, tenth and eleventh periodic reports) due on 16 May 1998. The Committee decides to schedule this examination at its fifty sixth session.

1332nd meeting
19 March 1999

Decision 4 (54) on the Democratic Republic of the Congo

1. The Committee on the Elimination of Racial Discrimination reviewed again the situation in the Democratic Republic of the Congo in the context of the principles and objectives of the International Convention on the Elimination of All Forms of Racial Discrimination. As a result of this review, it is deeply concerned about the persistence, in flagrant violation of the Convention, of ethnic conflicts which are in general inspired by the policy of ethnic cleansing and may constitute acts of genocide.

2. Having received no information regarding implementation of the measures recommended by various international bodies, the Committee recalls its decisions 3 (51), 1 (52) and 4 (53) and especially the repeated recommendations of the Commission on Human Rights, and supports the communiqué issued by the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution of the Organization of African Unity at its fourth ordinary session in December 1998. In this connection, it strongly urges all the participants in the Congolese conflict to ensure the immediate cessation of all hostilities, an end to the persistent campaign of incitement to racial and ethnic hatred, and the prompt conclusion of the conflict through a negotiated peaceful settlement between the parties. It is, moreover, essential for the Government of the Democratic Republic of the Congo to cooperate in the achievement of

these goals with the Office of the United Nations High Commissioner for Refugees in Kinshasa.

3. Furthermore, the Committee supports the recommendations made by the Special Rapporteur of the Commission on Human Rights in his latest report (E/CN.4/1999/31, paras. 134-146). It shares the view that the persons responsible for serious violations of human rights, and especially of the International Convention on the Elimination of All Forms of Racial Discrimination, cannot be allowed to go unpunished.

4. The Committee also requests the Government of the Democratic Republic of the Congo to cooperate effectively, without creating obstacles or hindrances, in the work of the international investigators, whose sole aim is to secure the full observance of human rights and, in particular, of the International Convention on the Elimination of All Forms of Racial Discrimination, and to provide for a fair trial of those responsible for the violations by independent and impartial tribunals. It calls for an end to the persecution and harassment especially of members of non-governmental organizations, journalists, human rights advocates and political leaders.

5. The Committee, while supporting the statements made by the President of the Security Council, draws the attention of the Security Council, through the Secretary-General of the United Nations, to the situation persisting in the Democratic Republic of the Congo and to the need for the Council to adopt timely and effective measures to overcome the conflict, thereby contributing to the observance of human rights and, consequently, of the Convention. To this end, the Committee calls the attention of the Security Council, through the Secretary-General of the United Nations, to the need to cease the intervention of the Governments of other countries which are in one way or another participating in the struggle waged in the Democratic Republic of the Congo, as well as the illegal arms traffic into Congolese territory.

6. The Committee decides to keep this matter on its agenda under the item concerning prevention of racial discrimination, including early warning and urgent procedures. It hopes to receive information on compliance with the present decision.

1332nd meeting
19 March 1999

Decision 5 (54) on the Sudan

1. Acting under its early warning and urgent action procedures, the Committee, at its 1303rd meeting, on 21 August 1998 (see CERD/C/SR.1303), decided to review the situation in the Sudan at its fifty-fourth session. Specifically, the Committee expressed concern over persistent reports that human rights conditions had continued to deteriorate in the Sudan. The Committee appreciates the dialogue with the State party at its 1329th meeting (see CERD/C/SR.1329).

2. The Committee notes that in the Sudan questions of ethnicity, religion and culture are deeply intertwined and that, in many respects, the ongoing civil conflict is fuelled by this complex interrelationship.

3. As the now 16-year-old civil war in the territory of the State party has claimed as many as 1.9 million lives since 1983, the Committee expresses its concern over the ethnic dimensions of the conflict.

4. The Committee is gravely concerned at the numerous reports that all parties to the armed conflict have engaged in attacks on civilian populations of other ethnic origins, including summary executions, malicious and militarily unjustified destruction of civilian property, the diversion of relief supplies and the forcible recruitment of child soldiers. In addition, the Committee is concerned at reports that the State party has regularly bombed non-military targets.

5. The Committee continues to express deep concern over reports of grave abuses directed at ethnic minorities in the Nuba Mountains in central Sudan, a situation that the Committee, when it previously considered the Sudan, referred to as "a vast programme of ethnic cleansing" (A/48/18, para. 107). Concern was also expressed about the State party's role in the conflict that has erupted in the Darfur.

6. The Committee notes that the State party declared a ceasefire in July 1998 for some famine stricken regions in the war zone. The Committee welcomes reports that this ceasefire was extended for an additional three months in January 1999.

7. The Committee also expresses deep concern over reports from UNICEF that thousands of Sudanese of different ethnic origins have been enslaved, most of them women and children abducted by armed militia based in Government-controlled parts of the country. The Committee welcomes the State party's recently announced intention to prosecute those involved in the slave trade and looks forward to the State party taking immediate effective measures to achieve the freedom of all those enslaved.

8. While the Committee welcomes the adoption in 1998 of a new constitution through a national referendum, the Committee expresses concern over the non participation of Sudanese in the south of the country in the referendum

process and reports indicating that lawyers, trade unionists and other activists who questioned the constitutional adoption process were arrested. Moreover, the Committee regrets that the fundamental rights enshrined in both the Constitution and in earlier human rights decrees of 1993 have not been implemented in practice.

9. As a result, therefore, of the continuing human rights crisis, the Committee urges the State party to take the following steps to implement its treaty obligations under the International Convention on the Elimination of All Forms of Racial Discrimination:

(a) To implement immediately effective measures to guarantee to all Sudanese, without distinction, freedom of religion, opinion, expression and association; the right to security of person and protection by the State against violence or bodily harm; the right to study and communicate in a chosen language; and the right to enjoy their own culture without interference;

(b) To respect its obligations under humanitarian law, particularly article 3 common to the Geneva Conventions of 12 August 1949 and customary international law applicable to internal armed conflicts;

(c) To ensure that its police and security forces, and any paramilitary or civil defence forces acting with the support of the Government or under Sudanese military command, respect human rights and humanitarian law, including the provisions of the Convention, and that all those responsible for violations of any of the obligations contained therein are brought to justice;

(d) To take effective steps to protect internally displaced communities within the territory of the State party and to address the problems associated with the displacement of significant segments of the country's population due to war. The State party should consider giving effect to the provisions of the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) of the Special Representative of the Secretary General on internally displaced persons. In particular, the State party must recognize that all displaced persons have the right freely to return to their homes of origin under conditions of safety and that once returned all displaced persons have a right to have any property that was seized in the course of the conflict restored to them and to participate equally in public affairs upon their return;

(e) To implement a public education campaign urging tolerance with respect to ethnic, cultural and religious diversity.

10. The Committee welcomes the statement of the representative of the State party recognizing the right of the people of the south of the country to self-determination.

1332nd meeting
19 March 1999

B. Statement adopted by the Committee at its fifty-fourth session

22. At its 1318th meeting, on 10 March 1999, the Committee adopted the following statement:

Statement on the human rights of the Kurdish people

The Committee on the Elimination of Racial Discrimination is profoundly alarmed about widespread and systematic violations of human rights inflicted on people because of their ethnic or national origin. Ethnic antagonisms, especially when mixed with political opposition, give rise to many forms of violent conflict, including terrorist actions and military operations. In many parts of the world they cause immense suffering, including the loss of many lives, the destruction of cultural heritage and the massive displacement of populations.

In this context, the Committee expresses its concern about acts and policies of suppression of the fundamental rights and the identity of the Kurds as distinct people. The Committee stresses that the Kurdish people, wherever they live, should be able to lead their lives in dignity, to preserve their culture and to enjoy, wherever appropriate, a high degree of autonomy.

The Committee appeals to the competent organs of the United Nations and to all authorities and organizations working for peace, justice and human rights to deploy all necessary efforts in order to achieve peaceful solutions which do justice to the fundamental human rights and freedoms of the Kurdish people.

1318th meeting
10 March 1999

C. Decisions adopted by the Committee at its fifty-fifth session

23. At its fifty-fifth session, the Committee considered the situation in Australia, the Democratic Republic of the Congo

and Kosovo (Federal Republic of Yugoslavia) and adopted decisions.

Decision 1 (55) on Kosovo (Federal Republic of Yugoslavia)

1. The Committee on the Elimination of Racial Discrimination opposes all forms of racial discrimination and ethnic cleansing, irrespective of which groups are the perpetrators and which the victims. It has affirmed its support for multi-ethnic societies.

2. In the light of recent events in Kosovo the Committee has reviewed its earlier decisions relating to the region, notably 2 (47) of 17 August 1995, 2 (48) of 13 March 1996, 2 (51) of 18 August 1997, 3 (53) of 17 August 1998 and 1 (54) of 16 March 1999. In this respect it calls particular attention to the following:

(a) Any attempt to change or to uphold a changed demographic composition of an area against the will of the original inhabitants, by whatever means, is a violation of international human rights and humanitarian law;

(b) Persons shall be given the opportunity to return safely to the places they inhabited before the beginning of the conflict and their safety shall be guaranteed, as well as their effective participation in the conduct of public life;

(c) All those who commit violations of international humanitarian law or war crimes shall be held individually responsible for such acts.

3. The Committee recalls that a mission of three Committee members visited Kosovo in 1993 to help promote a dialogue between the Albanians in Kosovo and the Government of Yugoslavia, and that the Committee later again offered its good offices to promote such a dialogue.

4. The Committee also recalls its general recommendation XXI, in which it set out its approach to the right of peoples to self-determination, emphasizing that the implementation of the principle of self-determination requires every State to promote, through joint and separate action, universal respect for an observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations. Equally, the Committee has expressed its view that international law has not recognized a general right of peoples unilaterally to declare secession from a State.

5. The Committee further recalls its general recommendation XXII, on the rights of refugees and displaced persons, in which it noted that these include the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them.

6. The Committee is painfully aware that the Kosovo Albanians have been the victims of war crimes and crimes against humanity. At the same time the Committee expresses its profound concern that in recent weeks Serb inhabitants of Kosovo have been driven from their homes and made to flee Kosovo, that Serb inhabitants have been murdered, and that Roma inhabitants have been targeted.

7. The Committee appeals to all States to provide economic assistance and to ensure that such assistance reaches the population of Kosovo with a view to securing adequate living conditions for everybody without distinction as to race or national or ethnic origin.

8. The Committee appeals for support for the Special Representative of the Secretary-General in his efforts to restore the rule of law and respect for human rights, and calls with greatest urgency upon all those in power in Kosovo at the present time to ensure full and effective respect for human rights without distinction as to race or national or ethnic origin, and to promote understanding and tolerance among all ethnic groups in Kosovo.

1343rd meeting
9 August 1999

Decision 2 (55) on Australia

1. The Committee reaffirms the decisions concerning Australia which it took during tis fifty-fourth session in March 1999.

2. In adopting those decisions, the Committee was prompted by its serious concern that, after having observed and welcomed over a period of time a progressive implementation of the Convention in relation to the land rights of indigenous peoples in Australia, the envisaged changes of policy as to the exercise of these rights risked creating an acute impairment of the rights thus recognized to the Australian indigenous communities. It considered in detail the information submitted and the arguments put forward by the State party.

3. The Committee takes note of the comments received from the State party which, in accordance with article 9, paragraph 2, of the Convention, will be included in the Committee's annual report for 1999 to the General Assembly.[*]

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[*] See annex VIII.

4. The Committee decides to continue consideration of this matter, together with the tenth, eleventh and twelfth periodic reports of the State party, during its fifty-sixth session in March 2000.

1353rd meeting
16 August 1999

Decision 3 (55) on the Democratic Republic of the Congo

1. At its fifty-fifth session, the Committee on the Elimination of Racial Discrimination reviewed again the situation in the Democratic Republic of the Congo in the context of the objects and purposes of the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee regrets that the State party, although invited, was not able to be represented. The Committee continues to be deeply concerned at the persistent grave situation in the Democratic Republic of the Congo and the violations of the Convention, and in this respect reiterates the decisions it previously adopted on this matter and especially decision 4 (54).

2. The Committee urgently requests all parties to the continuing conflict in the Democratic Republic of the Congo to cooperate fully with all the efforts made in the international sphere, *inter alia,* the actions undertaken by the Organization of African Unity, the Southern African Development Community and the United Nations High Commissioner for Human Rights. The Committee particularly requests all parties and especially the Government of the Democratic Republic of the Congo to comply with Security Council resolution 1234 (1999), Commission on Human Rights resolution 1999/56 and the above-mentioned decisions of the Committee.

3. The Committee decides to retain the matter on its agenda under the item concerning prevention of racial discrimination, including early warning and urgent procedures.

4. The Committee requests the Government of the Democratic Republic of the Congo to submit to the Committee information on the situation in the country from the point of view of the Convention, taking into account decision 4 (54).

1368th meeting
25 August 1999

D. Statement adopted by the Committee at its fifty-fifth session

24. At its 1362nd meeting, on 20 August 1999, the Committee adopted the following statement:

Statement on Africa

The Committee on the Elimination of Racial Discrimination,

Extremely concerned over the growing ethnic conflicts and the inadequacy of attempts to prevent and mitigate them in the Great Lakes region and certain other parts of Africa,

Reiterating its recent decisions, declarations and concluding observations, such as decision 3 (49) of 22 August 1996 on Liberia, resolution 1 (49) of 7 August 1996 on Burundi, decisions 3 (51) of 20 August 1997, 1 (52) of 19 March 1998, and 4 (53) of 18 August 1998 on the Democratic Republic of the Congo, the declaration of 13 March 1996 on Rwanda, the concluding observations on Rwanda of 20 March 1997, the concluding observations on Burundi of 21 August 1997, decisions 4 (52) of 20 March 1998, 5 (53) of 19 August 1998 and 3 (54) of 19 March 1999 on Rwanda, decision 5 (54) of 19 March 1999 on the Sudan, which were the results of the Committee's consideration of the ethnic conflicts in these States parties under its early warning and urgent action procedures within the context of the Convention,

Aware of the important initiatives undertaken recently by the Organization of African Unity which has also proposed taking urgent measures in order to cope with the tragic situation in Central Africa, and expressing its appreciation for the significant mediating efforts by the heads of State of four African countries at their meeting in South Africa on 8 August 1999, reflected in a solemn declaration with a view to overcoming current crises and ethnic conflicts,

Expressing its appreciation to the Secretary-General of the United Nations for his report on the causes of conflict and the promotion of durable peace and sustainable development in Africa (A/52/871-S/1998/318, dated 13 April 1998), presented to the General Assembly and the Security Council, in which he stated that among the warring parties and factions "the main aim, increasingly, is the destruction not just of armies but of civilians and entire ethnic groups", and suggested specific measures *inter alia,* to promote peacemaking, harmonizing the policies and actions of external actors, mobilizing international support for peace efforts, improving the effectiveness of sanctions and enhancing the role of United Nations peacekeeping in Africa,

Expressing its appreciation to the United Nations High Commissioner for Human Rights for her recent and important initiatives directly related to ethnic conflicts in Africa, mentioned above, and its full support for the High Commissioner's actions,

1. *Expresses its alarm* at the growing mass and flagrant violations of human rights of the peoples and ethnic communities in Central Africa, in particular, massacres and even genocide perpetrated against ethnic communities, and resulting in massive displacement of people, millions of refugees, and ever deepening ethnic conflicts.

2. *Urges* the United Nations to take urgent action and effective measures under the Charter of the United Nations to put an end to these conflicts in Central Africa, to stop the massacres and the genocide, and to facilitate the safe return of the refugees and the displaced persons in their homes.

3. *Urges* all States and all United Nations bodies to support the initiatives and appeals of the Organization of African Unity and the heads of State of the four African countries in seeking a solution to current crises and ethnic conflicts in Central Africa.

1362nd meeting
20 August 1999

Chapter III
Consideration of reports, comments and information submitted by States parties under article 9 of the Convention

25. At its fifty-fourth and fifty-fifth sessions, the Committee considered reports, comments and information from 28 States parties under article 9 of the Convention. Country rapporteurs are listed in annex VI.

Austria

26. The Committee considered the eleventh, twelfth and thirteenth periodic reports of Austria (CERD/C/319/Add.5) at its 1305th and 1306th meetings (see CERD/C/SR.1305 and 1306), on 1 and 2 March 1999. At its 1327th meeting (see CERD/C/SR.1327), on 16 March 1999, it adopted the following concluding observations.

A. Introduction

27. The Committee welcomes the eleventh, twelfth and thirteenth periodic reports submitted by the Government of Austria in one document and the opportunity thus offered to continue its dialogue with the State party. Although the report followed the guidelines, the Committee is of the view that the information in it was too concise, was too focused on legislation and administrative measures, failed fully to address the Committee's concluding observations relating to the previous report of the State party, and did not sufficiently consider the extent to which residents benefited in practice from the protections promised in the Convention. The Committee expresses its appreciation for the constructive and concrete dialogue with the delegation and the additional information provided in response to the questions asked.

B. Positive aspects

28. The Committee notes with satisfaction that the State party has condemned genocide as a crime under international law, and trusts that all acts of genocide will be condemned without any distinction as to time, place or group of victims. In this regard, the Committee welcomes the establishment of the National Fund for Victims of National Socialism (1995), which offers a scheme for compensation of all the victims of genocide.

29. The Committee welcomes the information contained in the report concerning educational measures which provide for the teaching of the principles of tolerance and peaceful coexistence in a multicultural society. Satisfaction is also expressed in relation to the efforts undertaken by the State party to raise awareness and promote action against all forms of racial discrimination. The Committee notes, in this regard, the establishment of radio programmes for this purpose.

C. Principal subjects of concern

30. While the Committee is aware that the Convention has been incorporated into Austrian domestic law (Federal Constitutional Act, 1973) and welcomes the judgements of the Constitutional Court (1994/1995) which provide for equality in the treatment of aliens, concern remains about the element of subjectivity in the rule that "decisions refusing an alien equal treatment may only be admissible if and when there is a reasonable justification".

31. Concern is expressed that the immigration policy of the State party, contained in the Aliens Act of 1997, classified foreigners on the basis of their national origin. The Committee considers that the concept and effect of this policy may be stigmatizing and discriminatory and, therefore, contrary to the principles and provisions of the Convention.

32. While the Committee welcomes the measures taken by the State party for the protection of the rights of the Slovenian, Croatian and Hungarian minority groups, concern remains at the lack of corresponding measures for other "national ethnic minorities", in particular Czechs, Slovaks and Roma, as well as for those who are sometimes referred to as "new minorities". Concern is also expressed at the lack of legal protection for residents of foreign origin against discrimination committed by Austrian citizens.

33. While the Committee notes with appreciation the State party's efforts in the field of legislative reform, especially the amendments to the Austrian Penal Code (sects. 281 and 283), which criminalize racist propaganda and the incitement to racial hostility, the Committee is nevertheless still concerned that the condemnation of such acts is qualified by a reference to public peace and that article 4 (b) of the Convention is not fully implemented, notably as regards prohibition of organizations which promote and incite racial discrimination. Concern is also expressed about the number of reported incidents of xenophobia and racial discrimination, including acts of anti-Semitism and hostility against certain ethnic groups.

34. The Committee expresses its concern that, seven years after it drew the attention of the State party to the absence of sanctions against racial discrimination in the private sector, little progress has been made in fully implementing the provisions of articles 5 (e) and (f). In addition, the Committee expresses its concern that non-citizens are not currently eligible for participation in work councils.

35. Concern is expressed about reports of serious incidents of police brutality in dealing with persons of foreign origin and ethnic minorities, including the Roma.

D. Suggestions and recommendations

36. The Committee recommends that the State party introduce comprehensive legislation to prohibit racial discrimination in all its forms, covering both citizens and foreigners. Furthermore, it recommends that the State party consider amending the relevant provision in the Constitution Act implementing the Convention by deleting the word "sole" in connection with the basis of illegal racial distinctions.

37. The Committee encourages the State party to continue exploring ways of providing specific protection to all ethnic groups living in Austria. The Committee further recommends that the State party include in its next report more detailed information on the demographic composition of the Austrian population, in the light of paragraph 8 of the reporting guidelines. Information on the socio-economic situation, particularly the unemployment rate in the various ethnic communities, would be appreciated.

38. The Committee urges the State party to review those elements of its current immigration policy which classify foreigners on the basis of their national origin. In its forthcoming report the State party is requested to include information on current asylum practices.

39. The Committee recommends that the State party take the necessary steps to implement article 4 (b) of the Convention. The Committee further recommends that the State party include in its next report information on complaints of discrimination under article 4 of the Convention, the prosecution by the authorities of such offences, including criminal attacks against members of certain ethnic groups, as well as the action taken by the Ombudsman and by the competent courts. Where appropriate, information on reparation granted to victims, in accordance with article 6 of the Convention, would be appreciated.

40. The Committee recommends that the State party review its provisions for implementing article 6 of the Convention. In its forthcoming report, the State party should address, *inter alia*, the effectiveness of the protection and the adequacy of the remedies provided.

41. The Committee recommends that the State party consider withdrawing its declarations regarding articles 4 and 5 of the Convention.

42. It is further suggested that the State party consider providing education and training on racial tolerance and human rights issues to law enforcement officials and police officers, in accordance with article 7 of the Convention and general recommendation XIII of the Committee. In addition, the Committee suggests that the State party review the adequacy of its measures for investigating allegations of police brutality and abuse of office.

43. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

44. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some members of the Committee requested that the possibility of making such a declaration be considered.

45. The Committee suggests to the State party that its reports and the present concluding observations be widely distributed to the public. The Committee recommends that the State party's next periodic report, due on 8 June 1999, be an updating report and that it address all the points raised during the consideration of the eleventh, twelfth and thirteenth reports.

Republic of Korea

46. The Committee considered the ninth and tenth periodic reports of the Republic of Korea, submitted in one document (CERD/C/333/Add.1), at its 1307th and 1308th meetings, on 2 and 3 March 1999 (see CERD/C/SR.1307 and 1308), and adopted, at its 1329th meeting (see CERD/C/SR.1329), on 17 March 1999, the following concluding observations.

A. Introduction

47. The Committee welcomes the report of the Republic of Korea and expresses its appreciation for the regularity with which the State party submits its reports. It takes note of the detailed supplementary information provided by the delegation in the oral dialogue with the Committee. Nevertheless, the Committee is of the view that the information submitted regarding the follow-up of recommendations made by it during the consideration of the previous report of the State party was incomplete. The

Committee commends the quality of the delegation's oral replies to the questions raised during the discussion.

B. Positive aspects

48. The commitment by the State party to adopt a Human Rights Act and establish a national human rights institution before the end of the year 1999 is welcomed.

49. It is noted with satisfaction that the State party ratified, on 4 December 1998, International Labour Organization (ILO) Convention (No. 111) concerning discrimination in respect of employment and occupation.

50. Legislative measures taken by the State party to prevent and combat racial discrimination are welcomed. These measures include the State party's decision to apply the Labour Standard Act to all illegal foreign workers as of October 1998; the amendment to the Foreign Land Acquisition Act on 15 May 1998 and the amendment to the Nationality Act on 13 December 1997.

51. It is noted with interest that, according to the information provided in the report of the State party, the provisions of the Convention take precedence over any conflicting national law.

52. The wide range of dissemination and training activities undertaken by the authorities in the field of human rights, including activities to prevent and combat racial discrimination, are welcomed.

53. The declaration made by the Republic of Korea under article 14, paragraph 1, of the Convention, recognizing the competence of the Committee to receive and consider communications from individuals or groups, is welcomed, as well as the State party's ratification of the amendment to article 8, paragraph 6, of the Convention.

C. Principal subjects of concern

54. While acknowledging that the envisioned Human Rights Act is intended to contain provisions covering all legal obligations set out in articles 2 and 4 of the Convention, the Committee remains concerned that neither the Constitution nor any law of the State party explicitly prohibits discrimination on the basis of race, colour, descent, or national or ethnic origin, and that no law contains provisions explicitly penalizing acts of racial discrimination or prohibiting organizations which promote and incite racial discrimination.

55. The absence of information in the State party's report regarding acts of racial discrimination as well as on action to prevent racial segregation in the light of general recommendation XIX is regarded as a shortcoming.

56. The Committee notes that information provided with regard to article 5 of the Convention covered only labour-related rights. As a result, the Committee has been unable to form an opinion on the actual situation regarding the equal enjoyment by all persons of the other rights set forth in article 5 of the Convention.

57. The Committee is concerned at the vulnerable situation of foreigners with irregular status who live and work in the country, usually under difficult and precarious conditions. Such persons are victims of discrimination, in violation of article 5 of the Convention, notably paragraphs 5 (d) and (e).

58. While acknowledging the efforts undertaken by the State party to improve the status of foreigners, concern is expressed about discrimination against people of foreign origin who were born and have settled in the Republic of Korea. De facto discrimination against Amerasian children and against Korean women married to asylum seekers is also of concern.

D. Suggestions and recommendations

59. The Committee recommends that the State party take all appropriate legislative measures to ensure that articles 2 and 4 of the Convention are fully reflected in domestic law. In this regard, it suggests that the Human Rights Act that is to be enacted before the end of 1999 explicitly prohibit discrimination on the basis of race, colour, descent, or national or ethnic origin, declare such acts illegal and penalize them, as prescribed in article 4 of the Convention. Additionally, the Committee requests that the State party submit, together with its next periodic report, the full texts of all new legislation adopted to prevent and combat discrimination.

60. The Committee recommends that the next report of the State party should include information on legislative and practical measures taken by the authorities to ensure respect for the provisions of article 5 of the Convention.

61. While acknowledging the fact that the State party has recently taken measures to improve the status of foreign "industrial trainees" and other foreigners working in the country, the Committee suggests that the Government of the Republic of Korea take further measures against discrimination in the labour conditions of foreign workers. The Committee also recommends that measures be taken to improve the situation of all migrant workers, particularly those with irregular status.

62. The Committee recommends that further measures be taken to ensure that persons of foreign origin who were born or have settled in the Republic of Korea are not subject to discrimination based on ethnic origin. The Committee

recommends that the State party take all appropriate measures, including awareness-raising campaigns, to protect women married to asylum seekers and children of mixed marriages, particularly Amerasian children, from racial discrimination or racial prejudice.

63. Noting that no cases of racial discrimination have reached the courts or administrative bodies, the Committee recommends to the State party to increase its efforts to provide easy access to existing recourse mechanisms dealing with relevant provisions of the Convention, including the procedure set out in its article 14.

64. The Committee recommends that the State party provide legal aid to victims of acts of racial discrimination and facilitate access to recourse procedures by vulnerable groups.

65. The Committee suggests that the State party allocate more resources to facilitate dissemination, education and training in order to promote the principles and objectives of the Convention. In this regard, it recommends that the State party take appropriate steps to widely disseminate its report, along with the present concluding observations of the Committee, in the Republic of Korea.

66. The Committee recommends that the next periodic report of the State party be an updating report dealing with the suggestions and recommendations of the present concluding observations.

Finland

67. The Committee considered the thirteenth and fourteenth periodic reports of Finland (CERD/C/320/Add.2) at its 1309th and 1310th meetings (see CERD/C/SR.1309 and 1310), on 3 and 4 March 1999, and adopted, at its 1326th meeting (see CERD/C/SR.1326), on 16 March 1999, the following concluding observations.

A. Introduction

68. The Committee notes with appreciation that the State party has submitted a detailed and comprehensive report which complies with the Committee's general guidelines and addresses the different issues raised by the Committee in its previous concluding observations. The Committee also appreciates the additional information provided by the State party's delegation during its oral presentation, as well as the constructive dialogue that the Government of Finland maintains with the Committee.

B. Positive aspects

69. It is noted with satisfaction that since the examination of its eleventh and twelfth periodic reports, the State party has taken further measures to combat racial discrimination. At the regional level, Finland has ratified the Framework Convention for the Protection of National Minorities of the Council of Europe. At the national level, a Ministerial Group on Good Ethnic Relations and an Anti-Racism Committee have been established. The Council of State adopted the Decision-in-Principle on Measures for Promoting Tolerance and Combating Racism, which was preceded by the Action Plan against Racism, as well as the Decision-in-Principle for the Government Programme on Immigration and Refugee Policy. In addition, a new Act on the integration of immigrants and reception of asylum seekers has been drafted, as well as amendments to the Aliens' Act providing immigrants, *inter alia*, with an extended right of appeal and facilitating the reunification of families.

70. The large representation of immigrant groups and traditional national minorities in the new Advisory Board for Ethnic Relations as well as their participation in the Commission against Racism, Xenophobia, Anti-Semitism and Intolerance is also welcomed.

71. The recent legislation ensuring enjoyment by immigrant children of their right to education, as well as the measures taken to facilitate education of immigrants in their own language, are welcomed. Measures to facilitate the education of the Sami and Roma people in their own language are similarly welcomed.

72. Preparations for the establishment of the post of an Ombudsman against Ethnic Discrimination to replace the Ombudsman for Aliens are also welcomed.

73. It is noted with satisfaction that the State party shares many of the Committee's concerns and that non-governmental organizations were given the opportunity to send written statements for the preparation of the thirteenth and fourteenth periodic reports of Finland.

C. Principal subjects of concern

74. Concern is expressed at the growing number of racist acts occurring in the country, a fact recognized by the State party itself. Despite this increase, in relatively few instances have judicial proceedings been initiated with respect to incidents of racial discrimination, including those in the labour market.

75. The Committee expresses its concern that article 4 of the Convention is not fully complied with, since there is no provision in the Finnish legislation prohibiting and

punishing organizations which promote and incite racial discrimination. Moreover, the Penal Code contains no provision declaring any dissemination of ideas based on racial superiority or hatred to be an offence punishable by law.

76. It is regretted that the question of land ownership of the Sami has not yet been settled and that, as a result, Finland has not yet ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

77. Concern is also expressed over the situation of immigrants and the Roma minority, particularly with respect to housing, the high rate of unemployment and education problems.

78. Incidents involving denial of access to public places for some persons on the basis of their ethnic or national origin, contrary to article 5 (f) of the Convention, continue to be a matter of concern.

D. Suggestions and recommendations

79. The Committee recommends the amendment of the Penal Code in order to fully implement article 4 of the Convention. The Code should, in particular, contain provisions declaring illegal and prohibiting organizations which promote and incite racial discrimination, as well as declaring the dissemination of ideas based on racial superiority or hatred, an offence punishable by law. Due consideration should be given in this respect to the Committee's general recommendation VII relating to the implementation of article 4 of the Convention.

80. The Committee recommends that the State party redouble its efforts towards the resolution of the land dispute concerning the Sami as soon as possible, in a manner that does justice to the claims of the Sami.

81. Additional measures should be taken at the State and municipal levels to alleviate the situation of the Roma minority and of immigrants with respect to housing, employment and education.

82. In accordance with article 5 (f) of the Convention, appropriate action should be taken to ensure that access to places or services intended for use by the general public is not denied to any person on grounds of national or ethnic origin.

83. Efforts should be made to increase the number of quota refugees. It is recommended that the quota system be applied without discrimination based on race or ethnic origin.

84. The State party is requested to provide information, in its next periodic report, on the extent to which members of vulnerable groups are in practice protected from the forms of discrimination listed in the Convention. Information should also be provided on cases concerning individuals who have been prosecuted for acts of racism, including membership in or collaboration with racist organizations or groups, as well as on compensation provided to victims of racial discrimination, especially in the labour market.

85. Furthermore, the next periodic report should also contain information on measures taken and progress achieved concerning the implementation of the Decision-in-Principle on Measures for Promoting Tolerance and Combating Racism.

86. The Committee invites the State party to make its report and the Committee's concluding observations and summary records thereon widely available in Finland. The possibility of holding a seminar in this respect is welcomed. The accepted individual communications procedure under article 14 of the Convention should also be widely publicized.

87. The Committee recommends that the State party's next periodic report, due on 13 August 1999, be an updating report, and that it address the matters raised in the present concluding observations.

Portugal

88. The Committee considered the fifth to eighth periodic reports of Portugal (CERD/C/314/Add.1) at its 1311th and 1312th meetings (see CERD/C/SR.1311 and 1312), on 4 and 5 March 1999, and adopted, at its 1328th meeting (see CERD/C/SR.1328), on 17 March 1999, the following concluding observations.

A. Introduction

89. The Committee welcomes the opportunity to resume its dialogue with the State party after a lapse of eight years. The Committee notes with appreciation that the report submitted by the State party is a comprehensive document which largely complies with the Committee's general guidelines. The Committee welcomes the frank and self-critical approach of the report, the constructive dialogue with the State party's delegation and the additional information in response to the questions raised by the members of the Committee, which reflect the serious commitment of the State party to implementing the provisions of the Convention.

B. Positive aspects

90. The efforts undertaken and the innovative measures adopted by the State party to combat racial discrimination are welcomed, as is the State party's willingness to recognize existing problems and to find appropriate solutions, both legislative and administrative. The Committee notes with appreciation that since the examination of the previous reports, a new Penal Code (1995) has been adopted which brings domestic legislation more into conformity with the Convention. It also notes with interest that the Portuguese Constitution was amended in 1997.

91. The Committee welcomes the information provided by the State party that the Convention is directly applicable in the Portuguese legal system and that it takes precedence over domestic legislation.

92. The Committee welcomes the enactment of Decree 296-A/95 of 17 November 1995 providing for the appointment of the High Commissioner for Immigration and Ethnic Minorities whose ultimate objective is to prevent xenophobia, intolerance and discrimination and to promote a dialogue with immigrants and ethnic communities. The initiatives taken by the High Commissioner in the sphere of training, education and information are appreciated.

93. The Committee notes with appreciation the State party's efforts to promote equal opportunity for Roma (Gypsies) and their better integration in society. The Committee notes, in particular, the establishment in 1996 of the Working Group for the Equality and Insertion of Gypsies, under the authority of the High Commissioner, and the existence of "Gypsy mediators" with the task of ensuring liaison between the Roma (Gypsy) community and the public and private sectors.

94. The Committee commends the State party's initiatives in 1992 and 1996 to regularize the situation of a large number of clandestine immigrants in order to allow them fully to enjoy their social, economic and cultural rights, particularly in regard to work, social services and access to housing.

95. With respect to article 7 of the Convention, the Committee welcomes the information given by the State party regarding its efforts to develop educational programmes for law enforcement officials, including human rights training in general and training concerning the provisions of the Convention in particular.

C. Principal subjects of concern

96. The Committee expresses its concern at manifestations of xenophobia and racial discrimination, including acts of violence directed against certain ethnic groups, particularly Blacks, Roma (Gypsies), immigrants and foreigners frequently perpetrated by skinheads, although the Committee acknowledges the efforts of the State party to combat such acts.

97. While noting that article 46, paragraph 4 of the Constitution of Portugal, as well as Law No. 64/78, prohibits racist organizations or organizations adhering to a fascist ideology, the Committee also expresses its concern that article 4 of the Convention is not fully complied with, since the protection thus provided for by law does not cover the wide variety of racist organizations that may exist or develop.

98. With regard to article 5 of the Convention, the report does not contain sufficient information to allow an evaluation of the practical implementation of the right to access to and equal treatment before the courts. The Committee expresses its apprehension concerning the de facto enjoyment of these rights by, in particular, Roma (Gypsies), Blacks, immigrants and foreigners.

D. Suggestions and recommendations

99. The Committee recommends that further measures be taken to harmonize domestic legislation with the provisions of the Convention. In this respect, it is recommended, in particular, that appropriate measures be taken to prohibit all organizations and groups, whether or not of fascist ideology, which promote racist ideas or objectives, in order to ensure that article 4 of the Convention is fully complied with.

100. It is also recommended that the State party continue and intensify its measures aimed at preventing and prosecuting any act or manifestation of racial discrimination or xenophobia, including acts of violence against certain ethnic groups, particularly Blacks, Roma (Gypsies), immigrants and foreigners.

101. The Committee suggests that further action be taken to ensure that the provisions of the Convention are more widely publicized, particularly among Roma (Gypsies), Blacks, immigrants and foreigners.

102. The Committee recommends that the State party in its next periodic report provide detailed and relevant information on the demographic composition of the Portuguese population, in accordance with paragraph 8 of the Committee's reporting guidelines.

103. The State party is invited to provide further information on the following issues: (a) complaints and court cases relating to racial discrimination; (b) the enjoyment in practice of the right to access to and equal treatment before the courts, in particular by Roma (Gypsies), Blacks, immigrants and foreigners; (c) activities undertaken by the High Commissioner for Immigration and Ethnic Minorities; (d) additional measures undertaken to combat manifestations of xenophobia and racial discrimination, including acts of violence directed against certain ethnic groups; and (e) the results of integration programmes established in connection with the regularization of the situation of clandestine immigrants in 1992 and 1996.

104. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

105. It is noted that the State party has not yet made the declaration provided for in article 14 of the Convention, and some members of the Committee request that the State party consider the possibility of making such a declaration.

106. The Committee requests that the State party give wide publicity to its report to the Committee, as well as to the present concluding observations.

107. The Committee recommends that the State party's next periodic report, due on 23 September 1999, be an updating report and that it address all the points raised in these concluding observations and during the consideration of the report.

Congo

108. At its 1313th meeting, on 5 March 1999 (see CERD/C/SR.1313), the Committee reviewed the implementation of the Convention by the Congo on the basis of information from United Nations and other sources. The Committee notes with regret that the initial report of the Congo has been overdue since 10 August 1989.

109. The Committee also notes with regret that the State party was not able to respond to its invitation to participate in the meeting and to furnish relevant information.

110. The Committee considers that the armed conflicts of 1997 had an important ethnic dimension.

111. The Committee deplores the part played by mercenaries and the impunity that has been enjoyed by those responsible for the many violations of human rights and the displacement of populations. It notes that members of Pygmy groups continued to suffer from ethnic discrimination.

112. The Committee requests the State party to investigate the violations of human rights, in particular acts of racial discrimination, to bring offenders to trial, to offer compensation to victims' families and to discontinue the employment of mercenaries.

113. The Committee requests the State party to provide it with relevant information on the implementation of legislation prohibiting and sanctioning racial discrimination. It also wishes to receive information on immigration, on the demographic composition of the population and on measures taken to ensure that perpetrators of acts of violence related to racial discrimination are not benefiting from impunity.

114. The Committee urges the State party to open a dialogue with the Committee as soon as possible.

115. The Committee suggests that the Government of the Congo, if it wishes, may avail itself of the technical assistance offered under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights, with the aim of drawing up and submitting as soon as possible a report drafted in accordance with the reporting guidelines.

Italy

116. The Committee considered the tenth and eleventh periodic reports of Italy (CERD/C/317/Add.1) at its 1315th and 1316th meetings (see CERD/C/SR.1315 and 1316), on 8 and 9 March 1999. At its 1330th meeting, on 18 March 1999 (see CERD/C/SR.1330), it adopted the following concluding observations.

A. Introduction

117. The Committee welcomes the tenth and eleventh periodic reports, submitted in one document, and the opportunity to resume its dialogue with the State party. The Committee notes with satisfaction the regularity with which the State party has submitted its reports to the Committee. The Committee particularly appreciates the open, fruitful and constructive dialogue with the representatives of the State party and the additional information provided orally to the wide range of questions asked by members.

B. Factors and difficulties impeding the implementation of the Convention

118. The Committee acknowledges that recent events in neighbouring countries, particularly the former Yugoslavia

and Albania, have resulted in a large and sudden influx of immigrants to Italy.

C. Positive aspects

119. The Committee welcomes the stated intention of the State party to reform its law so that workers who are not citizens of member States of the European Union (EU) and who leave Italy may request payment of social security contributions made during the period of their employment in Italy.

120. The Committee welcomes the adoption of Law 40 of 6 March 1998, aiming at solving globally and systematically all issues concerning foreigners on Italian territory, as well as the legal provisions on immigrants and foreigners contained in Decree-Law 286 of 25 July 1998.

121. The Committee notes with appreciation the measures taken by the State party to regularize the situation of a large number of foreigners living in Italy, including the regularization of de facto family reunifications.

122. The Committee welcomes the efforts made by the State party in the area of education. Of particular significance are the measures taken to facilitate access to education for children of different cultural and linguistic backgrounds. The Committee also expresses its appreciation for the programmes of inter-racial tolerance which have been introduced in Italian schools and the additional subjects offered to non-EU pupils.

123. The Committee welcomes the statement of the representatives of the State party indicating the intention of the Government of Italy to ratify article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

D. Principal subjects of concern

124. Concern was expressed about the continuation of incidents of racial intolerance, including attacks against foreigners of African origin and against Roma people, which are sometimes not recognized by the authorities as having a racial motivation or are not prosecuted.

125. Another subject of concern is the lack of information concerning the implementation of article 6 of the Convention, despite requests to this end made by the Committee in the concluding observations of the report of the State party (see A/50/18, para. 105).

126. In light of reports indicating discrimination against persons of Roma origin, including children, in a number of areas, in particular housing, concern is expressed at the situation of many Roma who, ineligible for public housing, live in camps outside major Italian cities. In addition to a frequent lack of basic facilities, the housing of Roma in such camps leads not only to physical segregation of the Roma community from Italian society, but to political, economic and cultural isolation as well.

127. Concern is also expressed that in a draft law on minorities presently being considered by the Senate, the Roma are not considered as a minority group and thus would not benefit from the protection offered by the law.

128. In connection with reports of acts of violence and ill-treatment by police and prison guards against foreigners and members of minorities in detention, concern was also expressed about the apparent lack of appropriate training for law enforcement officials and other public officials regarding the provisions of the Convention.

E. Suggestions and recommendations

129. The Committee recommends that the State party strengthen its efforts towards preventing and prosecuting incidents of racial intolerance and discrimination against foreigners and Roma people, as well as ill-treatment of foreigners and Roma in detention.

130. The Committee also recommends that State authorities give more attention to the situation of Roma in Italy, with a view to averting discrimination against them.

131. The Committee recommends that the State party include in its next report statistical data on the ethnic composition of the country. The Committee would particularly appreciate data on the percentage of Italian citizens of foreign origin and the numbers of non-citizens living in Italy.

132. The Committee recommends that the next report include information on the implementation of article 6 of the Convention, including the number of cases dealt with by the relevant authorities and courts of justice.

133. The Committee recommends that the State party consider intensifying education and training of law enforcement officials, in accordance with article 7 of the Convention and general recommendation XIII of the Committee.

134. While acknowledging the various governmental bodies dealing with minority issues and racial discrimination, the Committee would welcome the establishment of a national human rights commission to address such concerns.

135. With regard to the declarations made by the State party regarding articles 4 and 6 of the Convention, the Committee recommends that the State party consider withdrawing these declarations.

136. The Committee recommends that the State party widely disseminate its report and the present concluding observations. The Committee recommends that the next periodic report of the State party, due on 4 February 1999, address the suggestions and recommendations of the concluding observations.

Peru

137. The Committee considered the twelfth and thirteenth periodic reports of Peru (see CERD/C/298/Add.5) at its 1317th and 1318th meetings (see CERD/C/SR.1317 and 1318), on 9 and 10 March 1999, and adopted the following concluding observations at its 1330th meeting, on 18 March 1999 (see CERD/C/SR.1330).

A. Introduction

138. The Committee welcomes Peru's submission of its twelfth and thirteenth periodic reports and the opportunity thus afforded to pursue a dialogue with the State party. The Committee thanks the State party for having sent a high-level delegation, led by the Minister of Justice, which provided additional information in reply to the many questions raised by the members of the Committee during the consideration of the report.

B. Positive aspects

139. The Committee takes note with satisfaction of the information provided on the marked decrease in the activities of subversive groups and on the fall in the number of complaints concerning human rights violations.

140. It also takes note with satisfaction of the information provided by the State party on the improvement in the country's economic situation.

141. It takes note with interest that Peru supports Agenda 21, adopted at the United Nations Conference on Environment and Development, one chapter of which deals with the role of indigenous communities and environmental preservation. Peru also took part in the establishment of a Special Commission on Indigenous Affairs in Amazonia and supported the creation of the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean.

142. The Committee takes note of the agreement reached with the International Labour Organization on the setting up of a special programme for the protection of indigenous communities, under which complaints concerning violations of human rights can be investigated and prosecuted.

143. The inclusion in school syllabuses of material intended to prevent racial discrimination is also noted with interest.

144. The Committee expresses satisfaction at the establishment of the Office of the Ombudsman and of its programme of activities for the indigenous population.

145. The Committee is pleased that Peru has made the optional declaration provided for in article 14 of the Convention, thereby accepting the procedure for individual communications.

C. Principal subjects of concern

146. The Committee regrets that the report provides only a partial response to the observations and recommendations made when the previous report was considered in 1995.

147. The Committee would like to know if the changes brought about by the 1993 Constitution regarding the status of international treaties, including the Convention, as opposed to national norms, could be detrimental to the implementation of the Convention.

148. The Committee notes with concern the close relationship between socio-economic underdevelopment and the phenomena of ethnic or racial discrimination against part of the population, chiefly the indigenous and peasant communities. In this respect, the Committee regrets the absence in the periodic report of information on the socio-economic indicators relevant to the situation of populations of indigenous, peasant or African origin. It nevertheless notes that the report acknowledges shortcomings in areas such as housing and health.

149. With regard to the implementation of article 2 of the Convention, the Committee reiterates its observations concerning the lack of information enabling it to know how the constitutional provisions guaranteeing the protection of the right to freedom from discrimination on racial or ethnic grounds are applied in practice.

150. With regard to article 4 of the Convention, the Committee notes with concern the lack of specific legislative provisions aimed at giving full effect to the Convention, though it acknowledges the existence of legislative initiatives aimed at making up for that lack.

151. The Committee regrets the absence of information on the number of complaints and court decisions concerning acts of racism and on the reparation awarded as a result. It notes with concern that in the cases brought before the courts, it was reportedly entirely up to the plaintiff to prove discrimination.

152. With respect to the right to equal treatment before the courts, the Committee notes with concern reports that interpreters are not in practice available to monolingual

indigenous people and that legislation has not been translated into indigenous languages.

153. It is also worrying to learn that people who are in fact subjected to all sorts of pressure, from both subversive groups and the forces of law and order, are being charged with aiding and abetting terrorists. Allegations have further been made that indigenous communities are being forced to set up self defence committees under the armed forces and that young people from the most underprivileged sectors of the population are being conscripted by force.

154. The Committee takes note of reports that the indigenous population, the members of which often have no identity papers and are illiterate, is thus deprived of the possibility of exercising its civic and political rights.

155. The Committee takes note of the information on major shortcomings in the health services provided for the rural population in the Andes and in Amazonia, and of the allegations of forced sterilization of women belonging to indigenous communities. It also takes note of reports that there is a difference of almost 20 years between the life expectancy of people of indigenous origin and that of the rest of the population.

156. With regard to the right to employment, the Committee takes note with concern of the reports that access to jobs and promotions is often influenced by racial criteria, while certain minor or disparaged jobs are left to persons of indigenous or African origin.

157. With regard to the right of access to all public places, the Committee takes note of the promulgation in late 1998, following complaints of discriminatory practices in that respect, of legislation prohibiting the owners of establishments open to the public from screening their clients on racial grounds. The Committee regrets, however, that this prohibition is not yet accompanied by any form of penalty.

158. The Committee is concerned about reports that the 1993 Constitution no longer totally guarantees that the communal property of indigenous populations is inalienable and unavailable for use.

159. With regard to the right to education, the Committee regrets the absence of information in the report on the number of children from communities of indigenous, peasant or African origin not attending school.

D. Suggestions and recommendations

160. Measures should be taken to guarantee the right of the most underprivileged members of the population to benefit from all the rights listed in article 5 of the Convention and the right to equal treatment before the courts and in the exercise of their political rights.

161. The Committee recommends that the State party bring its penal legislation into line with the provisions of the Convention, in particular with regard to article 4.

162. Programmes of instruction in human rights intended for justice administration personnel and members of the security forces should include training in the prevention of and protection against racial discrimination.

163. The Committee recommends that the State party take measures aimed at establishing a genuine dialogue between the Government and non governmental organizations in the fight against racial and ethnic discrimination.

164. In its next report, the State party should provide information on, *inter alia*: (a) the ethnic make up of the population, insofar as such information is available; (b) socio-economic indicators relevant to the situation of populations of indigenous, peasant or African origin; (c) the progress made to the benefit of those people on each of the rights listed in article 5 of the Convention; (d) the measures of legislative reform taken with a view to full compliance with the requirements of article 4 of the Convention and the punishment of all forms of racial and ethnic discrimination; (e) the follow-up to complaints from the victims of racial and ethnic discrimination and to their requests for reparation, in accordance with article 6 of the Convention; (f) the measures taken to train agents responsible for the implementation of legislation in terms of tolerance and inter-ethnic and inter-racial understanding; (g) the measures taken to spread knowledge of the Convention and to publicize the Committee's reports and concluding observations.

165. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

166. The Committee recommends that the State party's next report, which was due on 29 October 1998, be an updating report and that it should cover all the suggestions and recommendations made in these concluding observations.

Syrian Arab Republic

167. The Committee considered the twelfth to fifteenth periodic reports of the Syrian Arab Republic (CERD/C/338/Add.1/Rev.1) at its 1319th and 1320th meetings (see CERD/C/SR.1319 and 1320), on 10 and 11 March 1999. At its 1332nd meeting (see CERD/C/SR.1332),

on 19 March 1999, it adopted the following concluding observations.

A. Introduction

168. The Committee welcomes the twelfth, thirteenth, fourteenth and fifteenth periodic reports submitted by the Government of the Syrian Arab Republic in one document and the introductory presentation made by the delegation as well as the opportunity thus offered to recommence its dialogue with the State party after eight years. Nevertheless, the Committee regrets that the report did not follow the guidelines; the information was too concise and did not take into consideration the Committee's concluding observations relating to the previous report of the State party for the submission of a comprehensive report. The Committee expresses its appreciation for the constructive dialogue with the delegation and the additional information provided in response to the questions asked.

B. Factors and difficulties impeding the implementation of the Convention

169. The Committee notes that the State party, as a result of the Israeli occupation of part of its territory, is not in a position to exercise control over all its territory and consequently cannot ensure the implementation of the Convention in the Golan Heights. The Committee also takes note of the difficulties caused by the fact that the State party has hosted a great number of refugees for several decades. It is also noted that the state of emergency, which continues to be in force in the State party, militates against the unrestricted implementation of some of the provisions of article 5 of the Convention.

C. Positive aspects

170. The Committee expresses its satisfaction at the fact that the international conventions to which the State party has acceded, including the International Convention on the Elimination of All Forms of Racial Discrimination, have become an integral part of its domestic legislation and are binding on the judicial and other authorities of the State.

171. Efforts made by the State party to host Palestinian refugees, of whom 351,189 have been registered, and let them retain their identity are also noted with satisfaction.

172. The Committee notes with satisfaction that the State party's Penal Code (arts. 305, 307 and 109) reflects most of the provisions enshrined in article 4 of the Convention.

173. The Committee welcomes the information contained in the report concerning educational measures which provide for the inclusion of the teaching of human rights, including the need to combat and condemn racial discrimination, in school curricula. Satisfaction is also expressed in relation to the efforts undertaken by the State party to raise awareness and promote action against all forms of racial discrimination; the Committee notes, in this regard, the establishment of a human rights committee in every school in order to promote the principles of tolerance and peaceful coexistence among different ethnic groups in the State party.

174. The Committee also notes with satisfaction that the State party has ratified the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

D. Principal subjects of concern

175. While the Committee acknowledges the State party's efforts to protect the rights of ethnic national minorities, particularly Armenians, Palestinians and Jews, it is still concerned about the stateless status of a large number of persons of Kurdish origin, who are alleged to have entered the Syrian Arab Republic from neighbouring countries from 1972 to 1995 and who are said to number 75,000.

176. The Committee is concerned about Syrian-born Kurds, who are considered either as foreigners or as *maktoumeen* (unregistered) by the Syrian authorities and who face administrative and practical difficulties in acquiring Syrian nationality, although they have no other nationality by birth.

E. Suggestions and recommendations

177. The Committee encourages the State party to continue to explore ways of providing protection to all ethnic or national groups living in the Syrian Arab Republic and recommends that the State party include in its next report data on the ethnic composition of the population and on persons residing in the Syrian Arab Republic who are non-Palestinian refugees. Information on their socio-economic situation would also be appreciated.

178. In the light of article 3 of the Convention and general recommendation XIX, the Committee encourages the State party to monitor developments which may give rise to racial segregation and to work for the eradication of any negative consequences that ensue from such developments.

179. In order to be able to evaluate the implementation of articles 4 and 6 of the Convention, the Committee requests the State party to present information on the number of complaints, judgements and compensation awards arising from acts of racial discrimination.

180. The Committee recommends further action to protect the rights of all persons belonging to ethnic and national

groups to enjoy, without discrimination, the civil and political rights listed in article 5 of the Convention, notably the right to nationality and cultural self-expression. In particular, the Committee recommends that the State party review its legislation on nationality in order to find an expeditious solution to the situation of Syrian-born Kurds and refugee children born in the Syrian Arab Republic.

181. The Committee recommends that the State party undertake preventive measures, such as training programmes for law enforcement officials and security authorities, which will strengthen the implementation of the Convention, in accordance with article 7 of the Convention and general recommendation XIII of the Committee, with a view to preventing human rights violations such as arbitrary arrests, detention, and disappearances of stateless refugees and foreigners.

182. Some members of the Committee requested that the State party consider the possibility of making the declaration provided for in article 14 of the Convention.

183. The Committee recommends that the State party's next periodic report, due on 21 May 2000, be a comprehensive report, following the reporting guidelines established by the Committee.

184. The Committee suggests to the State party that the report and the present concluding observations be widely distributed to the public.

Costa Rica

185. The Committee considered the twelfth to fifteenth periodic reports of Costa Rica (CERD/C/338/Add.4) at its 1321st and 1322nd meetings (see CERD/C/SR.1321 and 1322), on 11 and 12 March 1999, and adopted, at its 1331st meeting (see CERD/C/SR.1331), on 18 March 1999, the following concluding observations.

A. Introduction

186. The Committee welcomes the opportunity to resume its dialogue with the State party after a lapse of seven years. The Committee is satisfied with the frank and constructive approach taken by the representatives of the reporting State in their dialogue with the Committee and for the additional information provided orally.

B. Positive aspects

187. The Committee welcomes the information provided by the State party that the Convention is directly applicable in the Costa Rican legal system and that it takes precedence over domestic legislation.

188. The Committee notes with interest the State party's efforts to promote equal opportunity for the indigenous population, and in particular the ratification of ILO Convention 169 on Indigenous and Tribal Peoples (1989), the existence of the National Indigenous Affairs Commission (CONAI) and the Office of the Ombudsman and the bill for the autonomous development of the indigenous people, which has been presented before the Legislative Assembly.

189. The Committee notes with appreciation that, even in times of economic crisis or natural disaster, the State party has traditionally maintained a generous refugee and immigration policy. It notes with particular interest that a "migratory amnesty" is currently in force, from 1 February 1999 to 31 July 1999, allowing for the regularization of the situation of a large number of clandestine immigrants in order to ensure their enjoyment of social, economic and cultural rights, particularly in regard to work.

C. Principal subjects of concern

190. While noting the concern of the State party to eliminate any difference of treatment in law not based on rational elements, the Committee is preoccupied that the legislation of Costa Rica does not contain explicit norms forbidding discrimination on the grounds of national or ethnic origin.

191. While noting that Act No. 4430 of 21 May 1968 and Act No. 4466 of 19 November 1969 render punishable by a fine any racial segregation with regard to the admission of people of different races to public or private places, the Committee is concerned that the financial penalties thus provided for do not constitute a sufficiently effective measure to prevent, prohibit and eradicate all practices of racial segregation, as required by article 3 of the Convention.

192. With regard to article 4 of the Convention, the Committee is concerned about the lack of specific and adequate legislative provisions prohibiting racial discrimination by private groups or associations. It stresses that article 2, paragraph 1 (d), of the Convention makes it an obligation for States parties to prohibit racial discrimination committed not only by individuals but "by any persons, group or organization".

193. The Committee notes with concern recent manifestations of xenophobia and racial discrimination, largely focused on immigrants, in particular Nicaraguans. In this context, the Committee also expresses its concern about the vulnerable status of refugees and clandestine immigrants, who often live and work in the country in precarious conditions, and who frequently become victims

of discrimination in the terms of article 5 of the Convention, in particular paragraph 5 (e).

194. The Committee remains concerned at the situation with regard to the land rights of indigenous peoples in the State party. Despite the efforts made, problems relating to the allocation of land and/or compensation persist. Of special concern have been confrontations arising over the ownership of property, in the course of which indigenous people were killed and vandalism occurred, as in the case of Talamanca.

195. Noting that few cases of racial discrimination have reached the courts or administrative bodies, the Committee is concerned about the effective access to protection and remedies against any acts of racial discrimination of, in particular, the indigenous population, the black minority, refugees and immigrants.

196. The Committee notes with concern that the report of the State party is devoted mainly to the existing legal and administrative framework for ensuring protection against racial discrimination, whereas insufficient information is given to allow an evaluation of the effective enjoyment of the rights provided for by the Convention, in particular by the indigenous population, the black minority, refugees and immigrants.

197. With respect to article 7 of the Convention, the Committee notes that limited information has been given concerning the State party's undertaking to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudice which leads to racial discrimination.

D. Suggestions and recommendations

198. The Committee recommends that the State party take all appropriate legislative measures to ensure that articles 2 and 4 of the Convention are fully reflected in domestic law. In particular, the Committee emphasizes the importance of adequately prohibiting and penalizing acts of racial segregation and discrimination, whether they are committed by individuals or associations.

199. It is also recommended that the State party intensify its measures aimed at preventing and prosecuting any act or manifestation of racial discrimination or xenophobia, including acts of violence against persons belonging to ethnic and national minorities.

200. The Committee recommends that the next periodic report of the State party should include information on the scope and the implications of the new immigration legislation.

201. It is also recommended that the State party take immediate and appropriate measures to ensure the enjoyment of the provisions of article 5 of the Convention also by the indigenous population, the black minority, refugees and immigrants.

202. The Committee recommends that the State party intensify its efforts to ensure a fair and equitable distribution of land, taking into account the needs of the indigenous population. The Committee stresses the importance that the land holds for indigenous peoples and their spiritual and cultural identity, including the fact that they have a different concept of land use and ownership. In this regard, the approval by the Legislative Assembly of the bill for the autonomous development of indigenous people would be of great importance.

203. With regard to article 6 of the Convention, the Committee recommends that the State party make additional efforts to facilitate equal access to the courts and administrative bodies, in particular for the indigenous population, the black minority, refugees and immigrants, in order to ensure equality for all persons.

204. The State party is invited to provide further information on the following issues: (a) the effective enjoyment of the rights set out in the Convention, in particular by the indigenous population, the black population, refugees and immigrants and; (b) measures taken in the field of teaching, education, culture and information in order to combat racial discrimination, in compliance with article 7 of the Convention.

205. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6 of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

206. The Committee requests that the State party give wide publicity to its report to the Committee, as well as the present concluding observations.

207. The Committee recommends that the State party's next periodic report, due on 4 January 2000, be an updating report and that it address all the suggestions and recommendations contained in the present concluding observations.

Kuwait

208. The Committee considered the thirteenth and fourteenth periodic reports of Kuwait, submitted in one document (CERD/C/299/Add.16 and Corr.1), at its 1325th and 1326th meetings (see CERD/C/SR.1325 and 1326), on

15 and 16 March 1999. At its 1331st meeting, on 18 March 1999 (see CERD/C/SR.1331), it adopted the following concluding observations.

A. Introduction

209. The Committee welcomes the report of Kuwait and the opportunity to resume its dialogue with the State party. The Committee notes with satisfaction the regularity with which the State party has submitted its reports to the Committee. The Committee also expresses its appreciation to the delegation of the State party for the additional information that it provided to the Committee orally and in writing.

B. Factors and difficulties impeding the implementation of the Convention

210. The Committee acknowledges that, as a result of the invasion and occupation of Kuwait by Iraq, the State party was subjected to serious difficulties which continue to affect the capacity of the State party to fully implement all of the provisions in the Convention.

C. Positive aspects

211. The Committee welcomes the steps taken by the State party to grant Kuwaiti nationality to a certain number of non-Kuwaitis. In particular, the Committee welcomes the amendment to article 7 of the Nationality Act (Decree No. 15 of 1959), which provides that children of naturalized fathers born after their father acquired Kuwaiti nationality are now regarded as being of Kuwaiti origin. This provision also applies to those born after the entry into force of that Act.

212. The Committee welcomes the establishment of an executive committee on undocumented persons in the country. It also notes with satisfaction the approval by the Council of Ministers of Decree No. 60/1997 granting Kuwaiti nationality to the children of martyrs, classified as *bidoon* (i.e. residing illegally in the country).

213. In connection with articles 2 and 4 of the Convention, the Committee welcomes the legislative proposal for the addition of two articles to the Penal Code of Kuwait. The first of these prohibits incitement to racial discrimination and the second stipulates that it is a punishable offence for public officials not to respect racial equality.

214. The Committee notes with appreciation the measures taken by the State party to protect the rights of foreign workers in Kuwait. In particular, the Committee welcomes the statement of the State party that it has ratified a large number of international conventions adopted by the International Labour Organization and the Arab Labour Organization with a view to protecting workers' rights.

215. In this regard, the Committee also welcomes the establishment of a Department of Domestic Labour Offices, as well as a Department to Regulate Recruitment Agencies, to monitor the employment of foreign domestic servants and to ensure that recruitment agencies act in a fair and just manner.

216. The Committee welcomes the establishment of a Committee for the Defence of Human Rights within the National Assembly, to monitor human rights issues in Kuwait.

D. Principal subjects of concern

217. While the Committee acknowledges the proposed amendment to the Penal Code in connection with article 4 of the Convention, it notes with concern that the Kuwaiti legislation is not in full compliance with the provisions of this article.

218. The Committee is still concerned about discriminatory measures in relation to vulnerable groups of foreigners, in particular, the treatment of foreign domestic servants.

219. The Committee is concerned by the fact that, in spite of efforts, the Government of Kuwait has not yet found a solution to the problems of the *bidoon*, the majority of whom are still stateless.

220. With regard to article 7 of the Convention, the Committee notes with concern the insufficient training for law enforcement officials and other public officials regarding the provisions of the Convention.

E. Suggestions and recommendations

221. The Committee recommends that the State party revise the Penal Code in order to introduce specific legislation to implement the provisions of article 4 of the Convention in accordance with general recommendations VIII and XV of the Committee.

222. The Committee recommends that the State party improve administrative and legal measures to guarantee the enjoyment by individuals belonging to vulnerable groups of foreigners, notably domestic workers, of the rights enshrined in the Convention without any discrimination.

223. The Committee recommends that the State party find a solution to the problems faced by the *bidoon* and ensure the enjoyment of their rights without any discrimination, in accordance with articles 2 and 5 of the Convention.

224. The Committee recommends that the next report include information on the implementation of article 6 of the Convention.

225. The Committee suggests that the State party consider intensifying the education and training of law enforcement officials, in accordance with article 7 of the Convention and general recommendation XIII of the Committee.

226. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

227. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some members of the Committee requested that the possibility of making such a declaration be considered.

228. The Committee recommends that the State party widely disseminate its report and the present concluding observations.

229. The Committee recommends that the next periodic report of the State party, due on 4 January 1998, be an updating report and address the suggestions and recommendations adopted by the Committee.

Mongolia

230. The Committee considered the eleventh to fifteenth periodic reports of Mongolia (CERD/C/338/Add.3) at its 1327th and 1328th meetings (see CERD/C/SR.1327 and 1328), on 16 and 17 March 1999. At its 1332nd meeting (see CERD/C/SR.1332), on 19 March 1999, it adopted the following concluding observations.

A. Introduction

231. The Committee welcomes the eleventh, twelfth, thirteenth, fourteenth and fifteenth periodic reports submitted by the Government of Mongolia in one document and the introductory presentation made by the delegation, as well as the opportunity thus offered to recommence its dialogue with the State party. The Committee notes with satisfaction that the report followed the guidelines. Nevertheless, the Committee is of the view that the information in the report was too succinct and that the report did not include information on specific legal provisions or examples of the actual implementation of the Convention.

B. Factors and difficulties impeding the implementation of the Convention

232. The Committee notes that the State party is in a period of economical and political transition, and that the difficulties of this transition have a great impact on the population.

C. Positive aspects

233. The Committee expresses its satisfaction at the statement by the State party's delegation that the international conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination, to which the State party has acceded, have become an integral part of its domestic legislation.

234. The Committee welcomes the enactment of the State party's Constitution (1992), which has included the prohibition of racial discrimination. The enactment of the Law of Mongolia on the Legal Status of Foreign Citizens (1993), which establishes equality between foreigners and Mongolian citizens in the exercise of their rights and freedoms, is also welcomed by the Committee.

235. The Committee welcomes the efforts of the State party to revise its domestic legislation in accordance with its new Constitution (1992). It also notes with satisfaction that the provisions of international instruments on human rights to which Mongolia is a party are duly taken into consideration in the process of legislative reform.

236. The Committee welcomes the information contained in the report concerning the Law on Education (1995), which prohibits racial discrimination in the field of education. Educational measures which provide for the inclusion in the school curricula of the teaching of human rights, including the need to combat and condemn racial discrimination, are also welcomed by the Committee.

237. The Committee also expresses satisfaction at the efforts undertaken by the State party to raise awareness of and promote action against all forms of racial discrimination.

238. The Committee welcomes the State Policy on Culture (1996), adopted by the State Great Hural of Mongolia, which provides means to ensure the preservation, respect, enrichment and development of the heritage, culture and traditions of ethnic groups.

239. The Committee notes with appreciation the State party's implementation of international cooperation programmes in the field of human rights education, in cooperation with the Office of the United Nations High Commissioner for Human Rights.

D. Principal subjects of concern

240. While the Committee notes with appreciation the State party's efforts in the field of legislative reform, it remains concerned about the lack of comprehensive legislation to combat discrimination based on race, colour, descent, or national or ethnic origin.

241. Although the Committee notes that the State party's report includes information on the demographic composition of Mongolia, it regrets the lack of information on the socio-economic situation of the different ethnic minority groups living in the State party.

242. The Committee notes that the State party's Criminal Code (art. 7) largely reflects the provision contained in article 4 (a) of the Convention. However, it remains concerned that the provisions of article 4 (b) and (c) of the Convention are not included in the Criminal Code.

243. Although the Committee notes that the State party's Constitution (1992) and the Law on the Legal Status of Foreign Citizens (1993) guarantee the rights enshrined in article 5 of the Convention, it expresses its concern at the absence of specific legislation to prohibit racial discrimination in the enjoyment of such rights.

244. While the Committee notes that article 19 of the State party's Constitution (1992) establishes the State's obligation to provide remedies in cases of human rights violations, it expresses its concern at the lack of specific legislation for the provision of compensation, as enshrined in article 6 of the Convention.

E. Suggestions and recommendations

245. The State party should give serious consideration to the enactment of a comprehensive law on ethnic minorities and combat discrimination based on race, colour, descent, or national or ethnic origin. The Committee recommends that the State party continue providing training programmes for law enforcement officials, in accordance with article 7 of the Convention and general recommendation XIII of the Committee.

246. The Committee encourages the State party to continue exploring ways of providing specific protection to all ethnic groups living in its territory. The Committee further recommends that the State party include in its next report statistical data on the socio-economic situation of the different ethnic minority groups.

247. The Committee recommends that the State party take the necessary steps to comply fully with the provisions of article 4 of the Convention. In order to be able to evaluate the implementation of article 4 of the Convention, the Committee also recommends that the State party include in its next report the relevant articles of the Criminal Code.

248. The Committee recommends that the State party review its civil and penal legislation in order to bring it into full conformity with the principles and provisions of the Convention, in particular articles 5 and 6 of the Convention.

249. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

250. The Committee notes that the State party has not made the declaration provided for in article 14 of the Convention. Some members of the Committee requested that the State party consider the possibility of making such a declaration.

251. The Committee recommends that the State party's next periodic report, due on 20 April 2000, be an updating report, and take into account all the suggestions and recommendations contained in the present concluding observations.

252. The Committee suggests to the State party that the report and these concluding observations be widely distributed to the public.

Haiti

253. The Committee considered the tenth to thirteenth periodic reports of Haiti (CERD/C/336/Add.1) at its 1334th and 1335th meetings (see CERD/C/SR.1334 and 1335), on 2 and 3 August 1999. At its 1354th meeting (see CERD/C/SR.1354), on 16 August 1999, it adopted the following concluding observations.

A. Introduction

254. The Committee welcomes the tenth, eleventh, twelfth and thirteenth periodic reports submitted by the Government of Haiti in one document as well as the opportunity thus offered to renew its dialogue with the State party. Although the Committee welcomes that the report followed the guidelines, it is of the view that the information in the report was too concise and that the report did not sufficiently address the Committee's concluding observations relating to the previous report of the State party. The Committee is encouraged by the presence of a high-ranking delegation and expresses its appreciation for the constructive dialogue with the delegation and the additional information provided in response to the questions asked.

B. Factors and difficulties impeding the implementation of the Convention

255. The Committee notes that the situation of human rights in the State party has improved, despite the continuing threats to its political and economic stability. In this connection, the Committee draws attention to the negative effects of the current political, economic and social crisis in the State party which have exacerbated discrimination among the different ethnic groups of the population. These factors are significant obstacles to the full implementation of the Convention.

C. Positive aspects

256. The Committee expresses its satisfaction with the information provided in the State party's report that international instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, become an integral part of its domestic legislation and are binding on the judicial and other authorities of the State.

257. The Committee notes that the State party's Constitution (1987) embodies the principles enshrined in the Universal Declaration of Human Rights, including the prohibition of racial discrimination.

258. The Committee notes with appreciation the State party's implementation of an international cooperation programme in the field of human rights in cooperation with the Office of the United Nations High Commissioner for Human Rights.

D. Principal subjects of concern

259. Concern is expressed at the State party's repeated assertion that there is no racial discrimination as defined in article 1 of the Convention. In this connection, the Committee is of the opinion that the absence of complaints and legal action by victims of racism may possibly be an indicator of a lack of awareness of the existence of available legal remedies in cases of racial discrimination, and that members of the public may not be sufficiently aware of the protection against racial discrimination provided by the Convention.

260. While noting that the State party's domestic legislation (*Decree of February 1981*) makes all acts of racial discrimination punishable by law, concern is expressed at the lack of information on the implementation of article 4 of the Convention, especially on how this principle is applied by judges, lawyers and civil servants.

261. Although it is noted that the State party's Constitution (1987) guarantees the enjoyment, without discrimination, of most of the rights enshrined in article 5 of the Convention, concern is expressed about reports of human rights violations committed by members of the Haitian National Police and that too little is done to prevent persons perpetrating, with impunity, acts of violence related to racial discrimination. Concern is also expressed at the lack of domestic legislation to prevent acts of racial discrimination by individuals in implementation of articles 2 (1) (d) and 5 (e) of the Convention.

262. While noting that the State party's Civil Code (arts. 1168 and 1169) establishes a legal mechanism for reviewing complaints of racial discrimination on the part of the State, concern remains that this legislation does not fully reflect the provisions of article 6 of the Convention.

263. With regard to the implementation of article 7 of the Convention, concern is expressed that the Convention has not yet been translated into Creole, since this is the other official language.

E. Suggestions and recommendations

264. The Committee recommends that the State party in its next periodic report provide full information on the demographic composition of the population in the light of paragraph 8 of the reporting guidelines, together with socio-economic indicators on the situation of the various ethnic communities.

265. Emphasizing the role of the judicial system in eliminating racial discrimination, while noting the current reforms to that system, the Committee requests the State party to include in its next periodic report a description of the existing legal mechanisms available to lodge complaints in cases of racial discrimination (e.g., in the light of the *decree of 4 February 1981* and the relevant articles of the Civil Code). In this connection, the Committee further recommends that the State party review its domestic legislation in accordance with articles 4 and 6 of the Convention.

266. In the light of articles 2 and 5 of the Convention, the Committee recommends that the State party enact legislation for the prevention of racial discrimination in the private sector. In this connection, the Committee recommends that the State party consider the establishment of a national institution to facilitate the implementation of the Convention, in accordance with the Committee's general recommendation XVII.

267. The Committee recommends that the State party include in its next report information on the restrictions upon

foreigners of different racial or ethnic origin and upon non-native Haitians, with respect to the enjoyment of the rights enumerated in article 5 of the Convention.

268. The Committee recommends that the State party consider providing education and training on racial tolerance and human rights issues to law enforcement officials, in accordance with article 7 of the Convention and general recommendation XIII of the Committee. In addition, the Committee suggests that the State party review its disciplinary action against perpetrators of police brutality with a view to reinforcing measures against such perpetrators.

269. The Committee requests the State party to include information in its next report on measures undertaken or envisaged for improving public awareness of the Convention. The Committee further suggests that the State party may wish to avail itself of the technical assistance offered under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights.

270. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some members of the Committee requested that the possibility of such a declaration be considered. The Committee also recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

271. The Committee recommends that the State party's next periodic report, due on 18 January 2000, be an updating report and that it address the points raised during the consideration of the report.

Romania

272. The Committee considered the twelfth to fifteenth periodic reports of Romania (CERD/C/363/Add.1) at its 1336th and 1337th meetings (see CERD/C/SR.1336 and 1337), on 3 and 4 August 1999, and adopted, at its 1360th meeting (see CERD/C/SR.1360), on 19 August 1999, the following concluding observations.

A. Introduction

273. The Committee welcomes the report submitted by the Government of Romania, together with the additional information provided by the delegation in reply to the questions and observations by members of the Committee during the oral consideration of the report. The Committee notes with appreciation the particular effort made to respond to concerns and requests for information expressed by the Committee on the occasion of the consideration of the previous periodic report in 1995.

B. Positive aspects

274. Note is taken with satisfaction of the legislative measures adopted since the consideration of the previous periodic report which are relevant to the implementation of the Convention, such as the Act regulating the institution of the People's Advocate and its entry into operation, and also the Act regulating the status of refugees.

275. Note is taken with interest of the establishment within the Executive of a Governmental Department for the Protection of National Minorities. In connection with the Roma, note is taken of the establishment, within that Department, of the National Office for Roma and of the efforts made at the inter-ministerial level to coordinate policies in support of this minority.

276. The efforts made to put into practice human rights education programmes, some of which are intended for law enforcement officials, are welcomed. Note is taken of the efforts to make the police more efficient and respectful of the rights of individuals in general and of minorities in particular.

277. The efforts aimed at facilitating access to mother-tongue education for members of national minorities are also welcomed.

278. Note is taken with interest of the increase in the number of persons belonging to national minorities who are members of the organs of the Legislature and the Executive, and also of local administrative bodies.

279. The Committee takes note with satisfaction of the submission to Parliament of bills for the ratification of the amendments to article 8, paragraph 6, of the Convention, approved at the fourteenth meeting of States parties to the Convention, and for approval of the declaration provided for in article 14 of the Convention.

C. Principal subjects of concern

280. Concern is expressed that the provisions of Romanian legislation making punishable acts of racial discrimination by individuals, are not in full conformity with the provisions of article 2, paragraph 1 (d), of the Convention. The fact that legislation contains no clear prohibition of organizations which promote and incite racial discrimination, within the meaning of article 4 (b) of the Convention, is also unsatisfactory.

281. Another subject of concern is the persistence of xenophobic attitudes and prejudice against certain minorities within Romanian society, which manifest themselves on numerous occasions in various mass media.

282. The situation of Roma is a subject of particular concern since no improvements have been noted in the high unemployment rates and the low educational level traditionally predominant among members of this minority; this contributes to the continued unacceptable prevalence of the negative and stereotyped image of the minority in the rest of society. Given its disadvantaged situation in society, particular concern is caused by the absence of economic and social measures of the kind envisaged in article 2 (2) of the Convention in favour of this minority, Romania's current difficult economic situation notwithstanding.

D. Suggestions and recommendations

283. The State party should adopt measures to include in legislation provisions which fully prohibit any act of racial discrimination by individuals, as provided for in article 2, paragraph 1 (d), of the Convention, and also any organization which promotes and incites racial discrimination, within the meaning of article 4 (b) of the Convention.

284. The Committee notes the limited number of cases of racial discrimination that have come before the organs administering justice. The Committee is of the opinion that the lack of more complaints and judicial decisions may indicate a lack of awareness of the existence of available legal remedies and of the protection against racial discrimination provided by the Convention. It suggests to the State party that it take measures to remedy that situation.

285. The Committee recommends that the State party take measures to prevent and punish racist practices in the mass media. In addition, adequate means should be found to ensure that the media constitute an instrument that helps to combat racial prejudice, particularly against the Roma, and fosters a climate of understanding and acceptance among the various groups which make up the country's population.

286. Measures of affirmative action should be adopted in favour of the Roma population, especially in the areas of education and vocational training, with a view, *inter alia*, to placing Roma on an equal footing with the rest of the population in the enjoyment of economic, social and cultural rights, removing prejudices against the Roma population and enhancing its capacity in asserting its rights. A coordinated effort by the various State bodies competent in this area, working in conjunction with representatives of the Roma population, is required.

287. While noting the State party's statement that in view of the absence of any practices of racial segregation or apartheid it has not taken any action to prevent or eliminate such practices, the Committee nevertheless requests the State party to take into consideration its general recommendation XIX relating to article 3 of the Convention.

288. The training programmes for law enforcement officials on human rights in general and observance of the Convention in particular must be continued. In this connection, the Committee invites the State party's attention to the content of its general recommendation XIII.

289. The Committee suggests to the State party that it take measures to ensure the effective dissemination, including in the languages of the national minorities, of the provisions of the Convention, as well as its periodic report and the Committee's concluding observations.

290. The Committee recommends that the State party's next periodic report, due on 15 October 2001, be an updating report, and that it should address all the points raised in these concluding observations.

Antigua and Barbuda

291. At its 1337th meeting on 4 August 1999 (see CERD/C/SR.1337), the Committee reviewed the implementation of the Convention by Antigua and Barbuda in the absence of any report. The Committee noted with regret that no report had been submitted to the Committee since the State party's ratification of the Convention in 1988.

292. The Committee regretted that Antigua and Barbuda had not responded to its invitation to participate in the meeting and to furnish relevant information. The Committee decided that a communication should be sent to the Government of Antigua and Barbuda along with its report setting out its reporting obligations under the Convention and urging that the dialogue with the Committee should begin as soon as possible.

293. The Committee suggested that the Government of Antigua and Barbuda avail itself to the technical assistance offered under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights, with the aim of drawing up and submitting as soon as possible a report drafted in accordance with the reporting guidelines.

Islamic Republic of Iran[*]

294. The Committee considered the thirteenth, fourteenth and fifteenth periodic reports of the Islamic Republic of Iran (CERD/C/338 Add.8) at its 1338th and 1339th meetings (see CERD/C/SR.1338 and 1339), on 4 and 5 August 1999. At its 1357th meeting (see CERD/C/SR.1357), on 18 August 1999, it adopted the following concluding observations.

A. Introduction

295. The Committee welcomes the submission of the State party's periodic report and the opportunity to continue a dialogue with the country. It appreciates the presence of a high-level delegation, which serves as an indication of the importance attached by the State party to its obligations under the Convention. The Committee also notes with satisfaction that the report constitutes a considerable improvement, in format as well as in substance, compared to previous reports.

B. Positive aspects

296. In the light of the State party's point of view on the problems involved in determining the ethnic composition of the population, the Committee notes that the information given on the ethnic composition is to a considerable extent in conformity with its previous requests and welcomes the efforts of the State party to provide statistics and breakdowns to enable an identification of different ethnic groups, including Azaris, Arabs, Kurds, Baluchis, Lurs and Turkmen.

297. The Committee notes with appreciation that the State party has a long tradition of receiving and hosting on its territory a large number of refugees, particularly of Afghan origin, and welcomes its efforts to provide the refugee community with food, shelter and health services.

298. In the light of article 2, paragraph 2, of the Convention, the Committee welcomes the information provided by the State party on the measures taken to eliminate discrimination in areas inhabited by disadvantaged ethnic and tribal minorities and groups. In particular, the Committee appreciates the introduction of increased quotas for students from underdeveloped provinces in public universities; the allocation of resources to promote research on the root causes of the problems of economically, socially and culturally disadvantages areas, such as the low number of girls enrolled in schools or completing their education; the successful literacy campaign launched in 1979 which has resulted in a significant rise in literacy among, in particular, women from disadvantaged areas; and, steps taken by the Ministry of Health and Medical Education to promote non-discrimination in terms of health care.

299. The Committee welcomes the approbation by the Council of Ministers of a Plan for the Comprehensive Development of the Nomadic Regions and other measures taken to improve the economic, social and cultural conditions of the nomadic population, such as the establishment of mobile schools, and efforts made to ensure the availability of adequate health service.

300. In relation to article 5 (c) of the Convention, the Committee welcomes information indicating a high level of participation in both local and national elections, including the population in regions inhabited by national and ethnic minorities. It further notes with appreciation that ethnic and national minorities, in particular the Kurds, are represented in the Parliament in proportion to the demographic composition of the country.

301. The Committee notes with appreciation the establishment of national institutions to promote, review and monitor human rights enumerated in international instruments and the Constitution, in particular the Islamic Human Rights Commission and the Board for Follow-up and Monitoring the Implementation of the Constitution.

C. Principal subjects of concern

302. Concern is expressed that the definition of racial discrimination found in, *inter alia*, article 19 of the Constitution of the Islamic Republic of Iran and the 1977 Bill for the Punishment of the Propagation of Racial Discrimination, is not in complete conformity with the broad definition contained in article 1, paragraph 1 of the Convention, which refers to any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin.

303. While the efforts of the State party to improve the economic, social and cultural conditions in disadvantaged areas are acknowledged, it is noted with concern that some provinces largely inhabited by persons belonging to minorities, such as Sistan/Baluchistan and other border areas, are still economically disadvantaged.

304. It is noted that several of the civil and political rights listed in article 5 (d) of the Convention, such as the freedom of thought, conscience and religion and the freedom of opinion and expression, are enjoyed subject to certain

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[*] Comments of the Government of the Islamic Republic of Iran were submitted on the concluding observations of the Committee pursuant to article 9, paragraph 2, of the Convention and are reproduced in annex IX.

restrictions. The Committee needs more information in order to assess whether these restrictions are in conformity with the Convention.

305. Although the report contains a good deal of information on legal provisions, sufficient information is lacking on the practical implementation of and the enjoyment of rights contained in articles 2, 4, 5 and 6 of the Convention, notably regarding the incidences of ethnically motivated practices, the number of complaints of racial discrimination and available remedies, as well as the practice of the judiciary.

D. Suggestions and recommendations

306. The Committee recommends that the State party take appropriate steps to bring its domestic legislation into full conformity with articles 1, paragraph 1, 4 (b) and 5 of the Convention, and to ensure, in particular, that legal stipulations providing for a difference in treatment do not result in discriminatory treatment based on race, colour, descent, or national or ethnic origin.

307. The Committee recommends that the State party continue to promote economic, social and cultural development in areas inhabited by disadvantaged ethnic and tribal minorities and groups, and to encourage the participation of these minorities in such development.

308. The Committee recommends that the State party ensure that seminars, training courses and workshops on human rights organized by the Islamic Human Rights Commission, the Ministry of Education and universities include teaching about the Convention and give due attention to the concluding observations of the Committee and the relevant national legislation, in particular relating to availability of domestic remedies.

309. In its next report, the State party should include comprehensive information relating to the practical implementation of the Convention, in particular on any complaints relating to racial discrimination brought before the courts, administrative bodies or the Islamic Human Rights Commission. The State party should also provide information on available remedies, on relevant case law and practice of the judiciary, on existing limitations as to the equal enjoyment of rights and freedoms contained in article 5 of the Convention, also, the Committee would like to receive further information on the work of the Islamic Human Rights Commission and the Board for Follow-up and Monitoring the Implementation of the Constitution.

310. The Committee suggests that the State party take steps to ensure the wide dissemination of the provisions of the Convention, as well as the State party's periodic reports and the concluding observations of the Committee.

311. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

312. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some of the members of the Committee requested that the possibility of such a declaration be considered.

313. The Committee recommends that the State party's next periodic report, which is due on 4 January 2000, be an updating report, taking into account the points raised in the present observations.

Maldives

314. At its 1343rd meeting, on 9 August 1999 (see CERD/C/SR.1343), the Committee reviewed the implementation of the Convention by Maldives on the basis of its previous report (CERD/C/203/Add.1) and its consideration by the Committee (see CERD/C/SR.944 and 950). The Committee noted with regret that no report had been submitted to the Committee since 1992.

315. The Committee also regretted that Maldives had not responded to its invitation to participate in the meeting and to furnish relevant information. The Committee decided that a communication should be sent to the Government of Maldives setting out its reporting obligations under the Convention and urging that the dialogue with the Committee should be resumed as soon as possible.

316. The Committee is aware that a new Constitution came into effect on 1 January 1998, containing provisions for the protection of certain civil and political as well as economic, social and cultural rights. The Committee is interested in receiving the relevant information from the State party, particularly with respect to any guarantees of equality and protection against racial discrimination.

317. The Committee appreciates the efforts of the State party in the field of education, with a literacy level accounting for 93.2 per cent, making the Maldives one of the leading countries in Asia in this respect.

318. The Committee requests further information in connection with the statements to be found in paragraph 1 of the fourth periodic report (CERD/C/203/Add.1) to the effect that "no form of racial discrimination exists in the Maldives based on race or any other differences among the

population", and that "therefore, no specific legislation is required to implement the provisions of the Convention".

319. The Committee also requests further information from the State party on the situation of the migrant workers and foreigners and, in particular, whether they enjoy the protection of the Convention.

320. The Committee suggests that the Government of Maldives avail itself of the technical assistance offered by the Office of the United Nations High Commissioner for Human Rights, with the aim of drawing up and submitting a report without any delay, drafted in accordance with the reporting guidelines.

Mauritania[*]

321. At its 1340th and 1341st meetings, on 5 and 6 August 1999 (see CERD/C/SR.1340 and 1341), the Committee considered the initial report and the second, third, fourth and fifth periodic reports, submitted as a single document (CERD/C/330/Add.1), and, at its 1362nd meeting (see CERD/C/SR.1362), on 20 August 1999, adopted the following concluding observations.

A. Introduction

322. The Committee welcomes the submission of the initial report of Mauritania and the opportunity to establish contact with the State party. The Committee is encouraged to note that the State party sent a high-level delegation, led by the Minister of Justice: it has taken note of the additional information supplied by the delegation in the course of a fruitful dialogue. Although the information submitted in the written report was not complete, the Committee expresses its appreciation for the quality of the oral replies supplied by the delegation to the questions raised in the course of discussions.

B. Positive aspects

323. The action and programmes undertaken by the State party to protect the most vulnerable ethnic groups in society are welcomed. In this regard, the Committee notes the establishment of a Commissioner for human rights, poverty alleviation and social integration (1998); the establishment of a Mediator of the Republic; and the measures taken in areas such as housing, health, education, the promotion of women's rights, youth protection, and the struggle against illiteracy and against surviving traditional practices of servitude.

324. It is noted with satisfaction that the International Convention on the Elimination of All Forms of Racial Discrimination, and other international human rights instruments, take precedence over national laws in the State party and may be invoked directly before the courts.

325. The Committee welcomes the ratification by the State party of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

326. The activities undertaken by the State party with a view to implementing article 7 of the Convention, especially the work accomplished through rural radio broadcasts and efforts to combat illiteracy, are also noted.

C. Principal subjects of concern

327. It is noted that the information supplied by the State party concerning the ethnic composition of the population and socio-economic indicators relating to the implementation of the Convention's provisions is incomplete.

328. Insufficient information has been provided about the implementation of articles 2, 4 and 6 of the Convention and about legislation on and judgements, prosecutions and penalties for acts of racial discrimination. The information given is insufficient to verify whether existing legislation is adequate to incriminate the acts referred to in article 4 of the Convention.

329. With regard to article 5 of the Convention, allegations are noted to the effect that some groups of the population, especially the black communities, are still suffering from various forms of exclusion and discrimination, especially where access to public services and employment is concerned. While the Committee notes with satisfaction that Mauritanian legislation has abolished slavery and servitude, it also notes that, in some parts of the country, vestiges of practices of slavery and involuntary servitude could still persist, despite the State party's efforts to eradicate such practices.

D. Suggestions and recommendations

330. For the submission of its next periodic report, the Committee recommends that the State party supply more detailed information concerning the ethnic composition of the population and socio-economic indicators relating to the

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[*] Comments of the Government of Mauritania were submitted on the concluding observations of the Committee pursuant to article 9, paragraph 2, of the Convention and are reproduced in annex XI.

implementation of the Convention's provisions, as stipulated in paragraphs 8 and 10 of the general guidelines on the preparation of reports.

331. The Committee recommends that the State party take all necessary legislative measures to ensure that articles 2, 4 and 6 of the Convention are fully expressed in national law. In this respect, it proposes that the State party, in its next periodic report, supply information concerning legislative measures adopted in compliance with the Convention. It would also like the next periodic report to contain judicial statistical data and, if available, practical examples of court appeals against racial and ethnic discrimination.

332. The Committee recommends that the State party include information in its next report on legislative measures and practices introduced by the authorities to give effect to the provisions of article 5 of the Convention, especially with a view to promoting the struggle against discrimination affecting the most vulnerable groups of the population, in particular the black communities, and to eradicating vestiges of practices of slavery and involuntary servitude.

333. With regard to implementation of article 7 of the Convention, the Committee encourages the State party to pursue its policy in the fields of education, teaching, culture and information. It recommends in particular that it intensify its efforts to promote the various national languages and to encourage the broad dissemination of human rights.

334. It is noted that the State party has not made the declaration provided for in article 14 of the Convention; some members of the Committee have requested that the State party consider the possibility of making such a declaration.

335. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted at the fourteenth meeting of States parties.

336. The Committee recommends that the State party's next periodic report be more complete and that it address all the points raised by the Committee.

Iraq

337. The Committee considered the fourteenth periodic report of Iraq (CERD/C/320/Add.3) at its 1344th and 1345th meetings (see CERD/C/SR.1344 and 1345), on 9 and 10 August 1999, and adopted, at its 1360th meeting (see CERD/C/SR.1360), on 19 August 1999, the following concluding observations.

A. Introduction

338. The Committee welcomes the fourteenth periodic report of the State party, which submitted only two years after the submission of the previous report and contains replies to issues raised by the Committee in 1997. That shows the State party's willingness to maintain a regular dialogue with the Committee. The Committee further welcomes the supplementary information provided by the State party in the annexes to the report as well as during the oral presentation. However, it regrets the limited information provided with respect to the implementation of some articles of the Convention, despite the recommendation made in the Committee's previous concluding observations that the fourteenth report should be a comprehensive one.

B. Factors and difficulties impeding the implementation of the Convention

339. The Committee notes the difficult economic and social situation prevailing in the country as a result of the war with the Islamic Republic of Iran, the Gulf War and the economic sanctions, as well as foreign military incursions in different areas of the country, which have caused human suffering as well as the destruction of part of the country's basic infrastructure and, ultimately, have had a negative impact on the full implementation of the human rights treaties, including the Convention. The Committee recalls in this respect that other human rights treaty monitoring bodies, such as the Committee on Economic, Social and Cultural Rights (especially in its general comment No. 8 (1997)), the Committee on the Rights of the Child and the Human Rights Committee have recognized the adverse consequences of the economic sanctions on the enjoyment of human rights by the civilian population and that, in its decision 1998/114, the Subcommission on Prevention of Discrimination and Protection of Minorities appealed to the international community, and to the Security Council in particular, for the embargo provisions affecting the humanitarian situation of the population in Iraq to be lifted. The Committee also takes note of a recent report of UNICEF which describes the tragic situation of children, including the loss of many lives, as a result of the economic sanctions. Those sanctions also affect the areas inhabited by ethnic groups.

340. The Committee joins the appeals to the international community and the United Nations, in particular, the Security Council, for the lifting of those embargo provisions affecting, in particular, the humanitarian situation of the population of Iraq.

341. The fact that the State's Central Administration lacks control over the northern governorates, where large numbers

of Kurds, Turkmen and Assyrians live, the infighting between Kurdish factions and foreign military incursions by foreign powers, hamper the implementation of the Convention by the State party in that region and makes it difficult for the Committee to exercise its monitoring functions.

342. Despite all the difficulties the Committee considers that the Government of Iraq maintains the competence for the implementation of its obligations under the terms of the Convention.

C. Positive aspects

343. It is noted with interest that the State party remains committed to the declaration of 1970 which recognized the ethnic, cultural and administrative rights of Kurdish citizens in the areas in which they constituted a majority, as well as to the Iraqi Kurdistan Regional Autonomy Act of 1974 by which the Autonomous Region was established as a separate administrative unit endowed with distinct personality. The laws and regulations aiming at protecting the cultural identity of the Turkoman minority and the Syriac-speaking community, dating back to the 1970s, are also commended. All those norms aiming at establishing high standards for the protection of the identity of the respective groups.

344. The Committee welcomes the measures taken by the Government of Iraq to clarify the situation of persons, including foreigners, who disappeared during the Gulf War.

345. The Committee equally welcomes the fact that an important number of refugees and other foreigners are received and live in Iraq.

346. It also welcomes the information from the Government that the internal legal order makes it possible for individuals to directly invoke the provisions of the Convention before the courts and that Iraqi legislation contains provisions prescribing penalties for acts of racial discrimination.

D. Principal subjects of concern

347. Concern is expressed as to whether, in the conditions prevailing in the northern governorates, members of minorities are able to enjoy the rights accorded to them by the legislation on autonomy and on cultural and linguistic rights.

348. Concern is also expressed over allegations that the non-Arab population living in the Kirkuk and Khanaquin areas, especially the Kurds, Turkmen and Assyrians, have been subjected by local Iraqi authorities to measures such as forced relocation, denial of equal access to employment and educational opportunities and limitations in the exercise of their rights linked to the ownership of real estate.

349. It is also noted with concern that the situation prevailing in the northern governorates has caused much suffering and the forced displacement of a large part of the population, including for members of ethnic groups living in the area.

350. Although the Penal Code contains provisions prohibiting the establishment or membership of any association, organization or body seeking to incite intercommunal conflict or provoke feelings of hatred and animosity among the population, such provisions do not fully reflect the requirements of article 4 of the Convention.

E. Suggestions and recommendations

351. The Committee recommends that the State party, in spite of the difficulties, make all efforts to abide by its obligations under the Convention, as well as the other international human rights treaties, to respect and ensure the rights of all persons within its territory.

352. While underlining that the Government of Iraq retains the competence for the implementation of the Convention in the northern region, the Committee appeals for the establishment of a climate of peace and understanding among the different Kurdish factions and between Kurds and other persons living in the region. The Committee also appeals to the different States and forces involved in the region to stop any activities leading to or encouraging ethnic conflict and intolerance, and contribute to the peace and respect of human rights of the entire population.

353. Allegations concerning discrimination against members of ethnic minorities in the Kirkuk and Khanaquin areas, as mentioned above, should be examined by the State party. The Committee requests to be informed about the result of such investigations.

354. The Committee recommends that the State party review its legislation in order to make it comply fully with the requirements of article 4 of the Convention.

355. Measures should be taken in order to ensure that law enforcement officials receive an effective training on all matters relating to all aspects of non-discrimination covered by the Convention.

356. The State party should include in its next periodic report updated data illustrating the level of enjoyment by the different ethnic groups of the economic and social rights enshrined in article 5 of the Convention. It should also provide information about the following issues: the breakdown of the demographic composition of the

population; statistics reflecting the number of persons belonging to the different minorities who are employed as civil servants in the central or local administrations; decisions issued by domestic courts as a result of complaints of racial discrimination; impact of the restrictions to the acquisition of real property, taking into account the composition of the population in the governorate of Baghdad.

357. The Committee also requests the State party to provide further information about the enjoyment by members of minorities of the right to freedom of movement and residence within the country and the right to leave their own country and return to it.

358. The Committee recommends that the text of the Convention, the periodic report, and the present concluding observations be made widely available to the public at large, also in the languages of the minorities.

359. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 during the fourteenth meeting of State parties to the Convention.

360. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some members of the Committee requested that the possibility of such a declaration be considered.

361. The Committee recommends that the State party's next periodic report, which was due on 13 February 1999, be a comprehensive report, and that it address the matters raised in the present concluding observations.

Central African Republic

362. At its 1344th meeting, on 9 August 1999 (see CERD/C/SR.1344), the Committee reviewed the implementation of the Convention by the Central African Republic on the basis of its previous review of the implementation of the Convention (see A/48/18, paras. 150-151, and CERD/C/SR.972 and 983). The Committee noted with regret that no report had been submitted to the Committee since 1986.

363. The Committee regretted that the Central African Republic had not responded to its invitation to participate in the meeting and to furnish relevant information. The Committee decided that a communication should be sent to the Government of the Central African Republic setting out its reporting obligations under the Convention and urging that the dialogue with the Committee should resume as soon as possible.

364. The Committee suggested that the Government of the Central African Republic avail itself of the technical assistance offered under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights, with the aim of drawing up and submitting as soon as possible a report drafted in accordance with the reporting guidelines.

Chile

365. The Committee considered the eleventh to fourteenth periodic reports of Chile (CERD/C/337/Add.2) at its 1346th and 1347th meetings (see CERD/C/SR.1346 and 1347), on 10 and 11 August 1999. At its 1361st meeting (see CERD/C/SR.1361), on 20 August 1999, it adopted the following concluding observations.

A. Introduction

366. The Committee welcomes the submission of the State party's periodic report, prepared in accordance with the Committee's guidelines, and it appreciates the opportunity to resume a dialogue with the country. The Committee commends, in particular, the frank and transparent spirit which characterized both the written report and the manner in which the delegation presented additional information and responded orally to the wide range of questions raised by the members of the Committee during the consideration of the report.

B. Positive aspects

367. The Committee commends the State party for openly recognizing the existence of racial discrimination on its territory and its historical links with conquest and colonialism. In this context, the Committee also welcomes article 1 of the Act No. 19.253 relating to the Protection, Advancement and Development of the Indigenous Inhabitants of Chile (1993 Indigenous Act) which "recognizes that Chile's indigenous inhabitants are the descendants of the human groups which have existed on the national territory since pre-Colombian times and which conserve their own ethnic manifestations, the land being for them the principal foundation of their existence and their culture".

368. The Committee welcomes the information from the State party that, according to article 5 of the Constitution, international treaties on human rights and fundamental freedoms such as the Convention which are ratified, promulgated and made effective by the State party are directly applicable by the courts.

369. The Committee welcomes the initiatives taken by the State party to promote the rights of its indigenous population: including the enactment of the 1993 Indigenous Act; the subsequent setting up and activities of the Indigenous Development Corporation; the important steps taken by the State party to ensure the right to land of the indigenous population through land purchase and transfer to indigenous communities, and the setting up of a special judicial system for the indigenous population which recognizes custom as a mode of proof and which allows for legal conciliation of, in particular, land disputes.

370. The Committee notes that further steps have been taken towards reform of the domestic legislation, in particular the proposed amendments to the Constitution to strengthen the legal status of the indigenous population, and the draft reform of the Penal Code which is currently under discussion in the Congress and which is designed to penalize acts of discrimination on the grounds of race, or national or ethnic origin. In this context the Committee also welcomes the intention of the State party to ratify ILO Convention No. 169 on Indigenous and Tribal Peoples (169).

371. The Committee notes with satisfaction that the State party, following the previous concluding observations of the Committee, has made the declaration under article 14 of the Convention recognizing the Committee's competence to examine complaints of persons who claim to be victims of violations by the State party of the rights set forth in the Convention.

372. In relation to article 7 of the Convention, the Committee notes the 1997 educational reform and the efforts of the State party to introduce teaching about human rights and their implementation in the school curriculum. The Committee also welcomes the State party's cooperation with the Office of the United Nations High Commissioner for Human Rights and the hosting of a workshop in 1997 on the possible establishment of a permanent forum for indigenous peoples in the United Nations system.

C. Principal subjects of concern

373. The Committee is concerned about the reported findings of research showing that a considerable part of the Chilean population demonstrates intolerant and racist tendencies.

374. The Committee expresses its concern at the absence of specific legislation to enforce some of the provisions of the Convention. The Committee, taking note that the 1993 Indigenous Act contains a specific article declaring intentional discrimination against indigenous persons an offence punishable by law, and that the National Security Act prohibits fascist organizations, recalls the proposals for reform of the Constitution and the Penal Code, but remains concerned about the current absence of a comprehensive legislation in full accordance with articles 2, paragraph 1 (d) and 4, of the Convention.

375. The Committee is concerned about land disputes which occurred during the period under examination between the Mapuche population and national and multinational private companies, resulting in tension, violence, clashes with law enforcement officials and, allegedly led to arbitrary arrests of members of the indigenous population.

376. The Committee expresses its concern about the situation of migrant workers, in particular of Peruvian nationality.

D. Suggestions and recommendations

377. The Committee commends the State party for having recognized its part in the discrimination experienced by the indigenous population, recalls its general recommendation XXIII and requests that the State party consider the issue of a formal apology, as well as ways to ensure compensation to all those concerned, a policy which, *inter alia,* will significantly contribute to the process of reconciliation in the society as a whole.

378. As part of the ongoing legislation reform process, the Committee recommends that the Constitution be amended to incorporate a prohibition of racial discrimination and that the scope of the Indigenous Act be extended to cover discrimination in effect in accordance with article 1, paragraph 1, of the Convention.

379. The Committee recommends that the State party take appropriate measures, within its ongoing legislative reform, to bring its legislation into full conformity with article 4 of the Convention, in accordance with the State party's obligations under article 2, paragraph 1 (d).

380. The Committee recommends that the State party use all effective means to raise the awareness of its people about the rights of indigenous peoples and national or ethnic minorities. It encourages the State party to continue to provide instruction on human rights standards in schools and organize training programmes for, in particular, law enforcement officials, in the light of general recommendation XIII.

381. In its forthcoming report, the State party should include detailed information relating to the following: the work and activities of the Indigenous Development Corporation; the system of land distribution; the judicial system in place for the indigenous population; the situation

of migrant workers, the implementation of articles 4 and 5 of the Convention and, ongoing legislative reforms.

382. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention adopted on 15 January 1992 during the fourteenth meeting of States parties to the Convention.

383. The Committee recommends that the State party's next periodic report, due on 19 November 2000, be an updating report, taking into account the points raised in the present observations.

Latvia*

384. The Committee considered the initial, second and third periodic reports of Latvia (CERD/C/309/Add.1) at its 1348th and 1349th meetings (see CERD/C/SR.1348 and 1349), on 11 and 12 August 1999. At its 1367th meeting (see CERD/C/SR.1367), on 23 August 1999, it adopted the following concluding observations.

A. Introduction

385. The Committee welcomes the submission of the combined initial, second and third periodic reports of Latvia, which was drafted in accordance with its guidelines for the preparation of reports. It also takes note of the draft core document provided as a working paper for the purpose of facilitating the examination of the report. The initiation of a frank and constructive dialogue with the State party is equally welcomed.

B. Factors and difficulties impeding the implementation of the Convention

386. Having regained independence and obtained United Nations membership in 1991, the State party has begun the process of legislative reform in the midst of large-scale economic and political transition. In doing so, the State party must deal with a legacy of difficult relations among various ethnic groups.

C. Positive aspects

387. The Committee notes with satisfaction that, notwithstanding the difficulties inherent in this period of transition, the State party has achieved a substantial level of social stability and made important progress in the area of legislative reform. It notes that among the first priorities established by Latvia was the ratification of international and regional human rights instruments. It welcomes the information of the State party that the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, and other international treaties, have constitutional status in domestic legislation and may be directly invoked in the courts. It also takes note of the addition of a new chapter in the Constitution entitled "Fundamental human rights", which enumerates many of the rights provided for in the Convention.

388. The Committee welcomes the fact that article 69 of the Criminal Code prohibits and provides for legal sanctions against the propagation of ideas based on racial or ethnic superiority or hatred, and against organizations and individuals that propagate such ideas.

389. The Committee notes that a number of restrictions that had been applied to non-citizens have been lifted, including on the right to own land and property, access to employment in various fields and the right to social security benefits.

390. The Committee welcomes the efforts being made to provide instruction, and the materials necessary for instruction, in minority languages. It notes also the efforts to facilitate instruction of members of minority groups in the national language, Latvian, particularly to adults who may not have had an opportunity to learn it in school.

391. The Committee also welcomes the comparative studies, referenda and invitations to residents of Latvia to engage in a national dialogue on such issues as differences in treatment of citizens and non-citizens, amendment of the Citizenship Law and the Framework Document for a National Programme on the Integration of Society.

392. The Committee notes with interest that measures have been taken to incorporate the cultivation of mutual tolerance and respect for the identity of different ethnic groups into school curricula at various levels of instruction on human rights.

D. Principal subjects of concern

393. Concern is expressed at the absence of a legal provision explicitly defining racial discrimination, in accordance with article 1 (1) of the Convention.

394. While noting the legislation adopted with respect to article 4 of the Convention, it is noted with concern that no case of dissemination of ideas of ethnic superiority or hatred, or of the use of defamatory language or the advocacy of violence based on such ideas has been brought to justice, and no organization involved in such activities has been

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* Comments of the Government of Latvia were submitted on the concluding observations of the Committee pursuant to article 9, paragraph 2, of the Convention and are reproduced in annex X.

prohibited, although the existence of such cases has been widely reported.

395. The Committee notes that only such persons who were citizens of Latvia before 1940 and their descendants have automatically been granted citizenship, while other persons have to apply for citizenship. Therefore, more than 25 per cent of the resident population, many of them belonging to non-Latvian ethnic groups, have to apply and are in a discriminatory position. Although the naturalization process has recently been made more accessible for elderly persons and for children, it is noted with concern that the qualification requirements may not be easily met and the naturalization process remains slow.

396. The Committee draws attention to the situation of persons who do not qualify for citizenship under the Citizenship Law and who are also not registered as residents, including those leaving the country temporarily. Concern is expressed that such persons may not be protected against racial discrimination in their exercise of rights under article 5 (d) (i) and (ii) and 5 (e) of the Convention.

397. Concern is also expressed about reports that there are still unjustified differences of treatment between citizens and non-citizens, mostly members of minorities, in the enjoyment of the rights provided for in article 5 (e) of the Convention.

398. With respect to article 5 (d) (i), concern is expressed that passports for non-citizens, replacing those issued by the former USSR, are being issued at an unreasonably slow pace. As the old passports are no longer valid for travel, persons who have not obtained a new Latvian passport are effectively prevented from leaving the country or, once departed, are prevented from returning.

399. It is noted with concern that the legislation of the State party requires a person's ethnic origin to be recorded in his or her passport, which may expose members of some minorities to discrimination on grounds of their origin.

400. Concern is expressed over the difficulties hampering the operation of the National Human Rights Office, established in 1996 in accordance with international standards on national human rights institutions, since these have direct consequences for the implementation of article 6 of the Convention.

401. Information that instruction in minority languages may be reduced in the near future is noted with concern.

E. Suggestions and recommendations

402. The Committee recommends that the State party take into account in its legislation the definition of racial discrimination in line with article 1 (1) of the Convention.

403. The Committee recommends the State party to actively implement all the provisions of article 4 of the Convention and to include in future reports information on cases brought to justice and their outcome.

404. The Committee urges the State party to streamline the process of naturalization for all those who apply for citizenship. It also encourages the State party to keep the criteria for eligibility under review, so as to solve this problem as soon as possible.

405. The Committee recommends that steps be taken to regularize as soon as possible the status of persons who do not qualify for citizenship and are not registered as residents, in order to avoid discrimination against them.

406. It is also recommended to the State party to review the differences of treatment between citizens and non-citizens, mostly persons belonging to ethnic groups, in the light of the provisions of article 5 (e), so as to eliminate any unjustifiable differences.

407. The Committee recommends the State party to reconsider the requirement to record ethnic origin in passports.

408. The Committee attaches great importance to the speedy resolution of problems facing the National Human Rights Office and calls on the State party to address this as a matter of urgency. The Committee requests information in the next periodic report of the activities of the Office, particularly the number of cases it has dealt with, the solutions that it has achieved for petitioners and its role in the review of national legislation and the consideration of proposed new laws relevant to human rights.

409. The Committee urges the State party to maintain the possibility to receive an education in languages of various ethnic groups or to study those languages at different levels of education, without prejudice for learning the official language, as well as of using mother tongue in private and in public.

410. In view of the need for persons involved in the administration of justice to adapt to a quickly evolving legal system, the Committee recommends that the State party undertake as a matter of priority the training of judges and other members of the legal profession in international human rights standards.

411. The Committee recommends that a wide dissemination be given in the Latvian and Russian languages to the report submitted to this Committee and to the present concluding observations.

412. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

413. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some members of the Committee requested that the possibility of such a declaration be considered.

414. The Committee recommends that the State party's next periodic report, which was due on 14 May 1999, be an updating report, taking into account the points raised in the present concluding observations.

Uruguay

415. The Committee considered the twelfth to fifteenth periodic reports of Uruguay (CERD/C/338/Add.7) at its 1350th and 1351st meetings (see CERD/C/SR.1350 and 1351), on 12 and 13 August 1999. At its 1361st meeting (see CERD/C/SR.1361), on 20 August 1999, it adopted the following concluding observations.

A. Introduction

416. The Committee welcomes the twelfth, thirteenth, fourteenth and fifteenth periodic reports submitted by the State party in one document as well as for the additional information provided orally by the delegation. The Committee expresses its satisfaction for the resumption of dialogue with the State party, interrupted since 1991. The Committee is also pleased that the report follows the guidelines, in particular that it addresses the Committee's concluding observations relating to the previous report of the State party.

B. Factors and difficulties impeding the implementation of the Convention

417. While the Committee notes with appreciation the State party's long-term achievements in the field of human development, it is of the opinion that the de facto social and economic marginalization of the Afro-Uruguayan and indigenous communities has generated discrimination against them. These factors are significant obstacles to the full implementation of the Convention.

C. Positive aspects

418. The Committee welcomes the constitutional status granted to the protection of human rights and the recognition of the principle of equality of persons in the State party's Constitution designed to preclude any form of discrimination, including racial discrimination.

419. The Committee welcomes the State party's inclusion of information on the demographic composition of the State party, in line with the Committee's previous recommendation. This information has proven to be a very useful tool for evaluating the implementation of the Convention in the State party.

420. The Committee welcomes the establishment of a special Commission, consisting of representatives of the State party's Central Bank and the Bank of the Eastern Republic of Uruguay, to investigate the existence of Nazi funds within the State party's financial system as well as the cooperation of this Commission with the National Jewish Committee.

421. The Committee welcomes the participation of national non-governmental organizations in the preparation of the report.

422. The Committee notes with appreciation the inclusion of information on educational programmes to enhance Uruguayan society's understanding of the Afro-Uruguayan culture.

D. Principal subjects of concern

423. The Committee remains concerned about the insufficient information on the situation of ethnic groups living in the State party's territory. Concern is also expressed about the lack of information on special measures, such as affirmative action programmes, taken for the protection of the rights of disadvantaged ethnic groups such as Afro-Uruguayans and indigenous groups.

424. The Committee remains concerned about the lack of information on the effective enjoyment of the rights provided for in, especially, article 5 (c) and (e), and in particular by members of the Afro-Uruguayan and indigenous communities. In addition, concern is particularly expressed about the situation of women belonging to the Afro-Uruguayan community, who are victims of double discrimination on grounds of both their gender and race.

425. While taking note of the information on the existing legal mechanisms (*habeas corpus* and *amparo*), nevertheless, in view of the situation that only few cases of racial discrimination have reached the courts or administrative bodies, concern is expressed about the

effective access to protection and remedies against acts of racial discrimination against, in particular, the Afro-Uruguayan and indigenous communities.

426. The absence of sufficient information on the teaching of human rights, in particular on the combating of racial discrimination, in the school curricula, as well as the lack of information on awareness-raising programmes to combat racial discrimination is a matter of concern.

E. Suggestions and recommendations

427. The Committee recommends that the State party include in its next report information on the political, economic and social situations of ethnic groups living in the State party's territory. The Committee requests the State party to establish specific protection measures, such as affirmative action programmes, for members of the Afro-Uruguayan and indigenous communities, to guarantee their enjoyment of all the rights enumerated in the Convention.

428. The Committee recommends that the State party take all appropriate legislative measures to ensure that article 4 of the Convention is fully reflected in domestic law. In particular, the Committee emphasizes the importance of adequately prohibiting and penalizing acts of racial discrimination, whether they are committed by individuals, organizations, public authorities or public institutions. In this connection, in order to better evaluate the implementation of article 4 (b) of the Convention, the Committee requests the State party to include in its next periodic report the text of the relevant articles of the Penal Code which prohibit and penalize "illicit associations".

429. The Committee also recommends that the State party take immediate and appropriate measures to ensure the enjoyment of all the rights enumerated in article 5 of the Convention in particular by members of the Afro-Uruguayan and indigenous communities and provide further information on this subject. With respect to employment, education and housing, the Committee recommends that the State party take steps to reduce present inequalities and adequately compensate affected groups and persons for earlier evictions from their houses.

430. The Committee recommends that the State party establish special programmes aimed at facilitating the social enhancement of women belonging to the Afro-Uruguayan community, who suffer double discrimination on grounds of both their gender and race.

431. The Committee recommends that the State party make additional efforts to facilitate equal access to the courts and administrative bodies for persons belonging to the Afro-Uruguayan and indigenous communities, in order to ensure equality of all persons.

432. The Committee recommends that the next periodic report of the State party include information on measures taken in the field of teaching, education, culture and information in order to combat racial discrimination, in compliance with article 7 of the Convention. In this connection, the Committee further recommends that the State party consider providing education and training on racial tolerance and human rights issues to law enforcement officials, in accordance with article 7 of the Convention and its general recommendation XIII.

433. The Committee recommends that the State party consider the ratification to the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

434. The Committee suggests to the State party that this periodic report and these concluding observations be widely distributed.

435. The Committee recommends that the State party's next periodic report, due on 4 January 2000, be an updating report and that it address the points raised during the consideration of the report.

Mozambique

436. At its 1352nd meeting, on 13 August 1999 (see CERD/C/SR.1352), the Committee reviewed the implementation of the Convention by Mozambique on the basis of its previous review of the implementation of the Convention (see A/48/18, paras. 176-177, and CERD/C/SR.980 and 983). The Committee noted with regret that no report had been submitted to the Committee since 1984.

437. The Committee regretted that Mozambique had not responded to its invitation to participate in the meeting and to furnish relevant information. The Committee decided that a communication should be sent to the Government of Mozambique setting out its reporting obligations under the Convention and urging that the dialogue with the Committee should resume as soon as possible.

438. The Committee suggested that the Government of Mozambique avail itself of the technical assistance offered under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights, with the aim of drawing up and submitting as soon as possible a report drafted in accordance with the reporting guidelines.

Kyrgyzstan

439. The Committee considered the initial report of Kyrgyzstan (CERD/C/326/Add.1) at its 1354th meeting (see CERD/C/SR.1354), on 16 August 1999. At its 1364th meeting (see CERD/C/SR.1364), on 23 August 1999, it adopted the following concluding observations.

A. Introduction

440. The Committee welcomes the submission of the State party's initial report, prepared in accordance with the Committee's guidelines and commends the quality of the frank, detailed and informative report. However, although appreciating the presence of a representative of the State party during the examination of the report, the Committee regrets the absence of a delegation with which an in-depth dialogue could have been initiated. An oral and immediate response to the wide range of questions raised by the members of the Committee during the consideration of the report could have eliminated some of its concerns.

B. Factors and difficulties impeding the implementation of the Convention

441. Having gained independence and obtained United Nations membership in 1992, the State party has begun the process of legislative reform in the midst of large-scale economic and political transformation. In doing so, the State party must deal with a legacy of difficult relations among various ethnic groups such as the violent clashes between ethnic Kyrgyz and Uzbek inhabitants in Osh Oblasty which occurred in 1990, resulting in human casualties and property damage.

C. Positive aspects

442. The Committee notes the efforts of the State party to include various state institutions, ethnic communities and non-governmental organizations in the preparation of the report.

443. The Committee notes that the Constitution of the State party prohibits any kind of discrimination on grounds of origin, sex, race, nationality, language, faith, political or religious convictions or any other personal or social trait or circumstance, and that the prohibition against racial discrimination is also included in other legislation, such as the Civil, Penal and Labour Codes.

444. The Committee notes with appreciation the statement of the State party that Kyrgyzstan is a multicultural society, and the efforts of the State party to promote involvement of the civil society in activities aiming at the elimination of racial discrimination and intolerance. These include the convening of multi-ethnic *kurultai* (councils), the Assembly of the People of Kyrgyzstan, and the cooperation with the OSCE High Commissioner on National Minorities which has resulted in the holding of several international seminars on inter-ethnic relations. These have brought together international experts, national non-governmental organizations and government representatives.

D. Principal subjects of concern

445. In regard to article 5 of the Convention, concern is expressed about racial discrimination against inhabitants who are not ethnic Kyrgyz in the fields of employment and housing, in particular against the Russian-speaking minority.

E. Suggestions and recommendations

446. The Committee recommends that the State party take steps to ensure that national legislation is in full conformity with article 4 (b) of the Convention.

447. The Committee wishes to receive further information regarding the practical enjoyment by persons belonging to ethnic and national minorities of the rights listed in article 5 (e) of the Convention, in particular the right to work, including the right to equal opportunities of promotion and career development, the rights to health, education and to housing.

448. The Committee requests the State party to provide further information on the measures taken to resolve the underlying problems which resulted in clashes and unrest between ethnic Kyrgyz and Uzbek inhabitants in Osh Oblasty so as to prevent the recurrence of such incidents. The Committee also wishes to receive further information related to the criminal proceedings brought against individuals involved in the incidents, and to what extent convictions were directly linked to acts of racial discrimination.

449. In its forthcoming report, the State party should also include information on the following: the mandate and activities of the Human Rights Commission established in 1997; the 1994 State Property (De-Statization and Privatization) Act, and the criteria for naturalization.

450. The Committee suggests that the State party take steps to ensure the wide dissemination of the Convention, the periodic reports of the State party and the conclusions of the Committee.

451. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention,

adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

452. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some members of the Committee requested that the possibility of such a declaration be considered.

453. The Committee recommends that the State party's next periodic report, which is due on 4 October 2000, be an updating report, taking into account the points raised in the present concluding observations.

Colombia

454. The Committee considered the eighth and ninth periodic reports of Colombia (CERD/C/332/Add.1) at its 1356th and 1357th meetings (see CERD/C/SR.1356 and 1357), on 17 and 18 August 1999, and adopted, at its 1362nd meeting (see CERD/C/SR.1362), on 20 August 1999, the following concluding observations.

A. Introduction

455. The Committee welcomes the extensive report submitted by the Government of Colombia, including information concerning Colombia's large indigenous and Afro-Colombian communities. The Committee also welcomes the information provided by the State party delegation during the oral consideration of the report, including information with respect to Colombia's Roma, Jewish and Lebanese communities.

B. Positive aspects

456. The Committee welcomes in particular the candor with which the State party report recognizes that Afro-Colombian and indigenous communities continue to be the victims of systemic racial discrimination, which has resulted in their marginalization, poverty and vulnerability to violence.

457. The Committee notes with satisfaction that the 1991 Colombian Constitution includes non-discrimination provisions addressing the rights of minority communities, including formal recognition of the rights of indigenous and Afro-Colombian communities to claim title to certain ancestral lands. The Constitution also recognizes and seeks to protect the cultural and ethnic diversity of the nation.

458. The Committee welcomes the initiatives taken by the Government of Colombia, including multi-year development programmes for the support of indigenous and Afro-Colombian communities and the establishment of a new inter-agency human rights commission under the authority of the Vice-President of Colombia to coordinate the State party's policy and plan of action on human rights and international humanitarian law.

459. The Committee notes the important decision on affirmative action by the Constitutional Court in the *Cimmarón* case.

460. The Committee welcomes the announcement by the State party representatives that a number of measures have been undertaken to promote respect for human rights within the military structure and to restrict the competence of military tribunals to hear human rights cases involving the armed forces.

C. Principal subjects of concern

461. While noting that the constitutional framework for prohibiting racial discrimination is firmly in place, the Committee nevertheless expresses concern that the accompanying legislative framework to give effect to these provisions has not been fully enacted.

462. The Committee expresses concern once again that the State party has not adopted legislation in conformity with article 4 of the Convention, which requires the enactment of specific penal legislation.

463. Concern is expressed at reports indicating that violence in Colombia has been largely concentrated in areas where indigenous and Afro-Colombian communities live; that increasingly these communities have been targeted by armed groups; and that the Government's tactics in fighting the drug trade have led to a further militarization of these regions, creating an atmosphere that is conducive to human rights violations and the destruction of cultural autonomy and identity.

464. Taking note also of indications that a climate of impunity has infected all levels of the judicial sector and that few human rights cases have been successfully prosecuted within civilian courts, the Committee expresses concern that this climate of impunity may severely impact the rights of indigenous and Afro-Colombian communities, as these minority communities are subjected disproportionately to violations of international human rights and humanitarian norms.

465. Serious concern is expressed at reports that more than 500 indigenous leaders have been assassinated in the last 25 years and that leaders of the Afro-Colombian community have come under similar attack. While all parties to the conflict have contributed to this level of violence, the Committee notes that paramilitary groups operating in the

country are reportedly responsible for a majority of the abuses.

466. It is noted that indigenous and Afro-Colombian communities are under-represented in State institutions, including in the legislature, the judiciary, government ministries, the military, and the civil and diplomatic services.

467. Emphasizing that the widespread violence which plagues Colombia has led to one of the world's largest populations of internally displaced persons, and that both the Afro-Colombian and indigenous communities have been particularly affected, the Committee expressed concern that measures by the Colombian Government to assist the displaced have been limited and that some internally displaced persons have been forced to return to regions where minimal conditions of safety could not be guaranteed.

468. Recognizing further that within the community of displaced persons women are disproportionately represented, concern is expressed that government programmes are not responsive to the needs of many indigenous and Afro-Colombian women who are subjected to multiple forms of discrimination based on their gender and their race or ethnicity, and their displaced status.

469. Concern is expressed that development and resource exploration programmes on land subject to the property rights of indigenous and Afro-Colombian communities have been pursued without sufficient consultation with the representatives of these communities and without sufficient concern for the environmental and socio-economic impact of these activities.

470. Additional concern is expressed over the media's coverage of minority communities, including the continued popularity of television programmes that promote racial and ethnic stereotypes. The Committee notes that such stereotypes serve to reinforce the cycle of violence and marginalization that has already severely affected the rights of Colombia's historically disadvantaged communities.

471. Grave concern is also expressed at reports of "social cleansing" in urban centres involving the murder of Afro-Colombian prostitutes and street children, some of whom appear to have been targeted on the basis of their race.

472. Concern is expressed that development programmes for the support of indigenous and Afro-Colombian communities have not been and are not expected to be fully implemented owing to financial limitations.

473. The Committee is also concerned that few land titles have been allocated under legislative programmes recognizing the property rights of indigenous and Afro-Colombian communities and that bureaucratic obstacles appear to have complicated the process.

D. Suggestions and recommendations

474. It is recommended that legislation be enacted, at the earliest possible opportunity, that explicitly and comprehensively implements the obligations under articles 2 and 4 of the Convention.

475. Recognizing that many Afro-Colombians live in extreme poverty in urban slum areas, the Committee recommends that the State party take steps to address de facto racial segregation in urban centres. The Committee also requests additional information in the next periodic report on housing patterns in urban areas and on legislation that may address discrimination in the housing sector.

476. The Committee recommends that the State party implement affirmative and effective measures to ensure increased employment opportunities for minority and indigenous communities in both the public and private sectors and to advance the social, political, economic, and educational status of historically marginalized communities.

477. The Committee requests that the State party include in its next report information about the implementation and impact of the measures recently announced to promote respect for human rights within the military, in connection with the implementation of the Convention.

478. The Committee urges the State party to take comprehensive steps to protect the security and promote the well-being of Colombia's large internally displaced population, consisting mainly of persons of the indigenous and Afro-Colombian communities and, as a matter of extreme priority, to guarantee the security of indigenous and Afro-Colombian community leaders and human rights defenders across the country who have sought to protect the rights of those communities.

479. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 during the fourteenth meeting of States parties to the Convention.

480. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some of the members of the Committee requested that the possibility of such a declaration be considered.

481. The Committee recommends that the State party's next periodic report be a comprehensive report in accordance with the reporting guidelines of the Committee and address the points raised in these concluding observations.

Azerbaijan

482. The Committee considered the initial and second periodic reports of Azerbaijan (CERD/C/350/Add.1) at its 1358th and 1359th meetings (see CERD/C/SR.1358 and 1359), on 18 and 19 August 1999. At its 1368th meeting (see CERD/C/SR.1368), on 25 August 1999, it adopted the following concluding observations.

A. Introduction

483. The Committee welcomes the initial and second periodic reports submitted by the State party in one document and the additional written information provided by the delegation as well as the opportunity thus offered to open its dialogue with the State party. It expresses its satisfaction at the high quality of the report, its conformity with the guidelines and the participation of non-governmental organizations in its preparation. The Committee has been encouraged by the presence of a high-ranking delegation and expresses its appreciation for the constructive dialogue with its members.

B. Factors and difficulties impeding the implementation of the Convention

484. After regaining independence in 1991 the State party was soon engaged in war with Armenia, another State party. As a result of the conflict, hundreds of thousands of ethnic Azerbaijanis and Armenians are now displaced persons or refugees. Because of the occupation of some 20 per cent of its territory, the State party cannot fully implement the Convention.

C. Positive aspects

485. The Committee notes with satisfaction that on ratification the International Convention on the Elimination of All Forms of Racial Discrimination, like other international instruments, became an integral part of the State's domestic legislation. It is particularly encouraged by the measures to secure the independence of judges and by the establishment of a special directorate to investigate irregularities in the treatment of members of the public by police officers.

486. The State party's efforts in supporting the teaching of the languages of minorities and other measures in the fields of teaching, education, culture and information on human rights are welcomed.

487. The Committee notes with appreciation the State party's implementation of an international cooperation programme in the field of human rights in cooperation with the Office of the United Nations High Commissioner for Human Rights.

D. Principal subjects of concern

488. The Committee expresses its concern about the continuation of the conflict in and around the Nagorny-Karabakh region of the Republic of Azerbaijan. Since the conflict undermines peace and security in the region and impedes implementation of the Convention, the Committee hopes that a solution can be found in accordance with the principles identified in the framework of the OSCE and with internationally recognized human rights standards.

489. Since the 1989 census the Russian-speaking and Armenian minorities have greatly declined in numbers. More information is needed on all ethnic groups, their geographical location and economic and social circumstances.

490. While noting that the State party's Constitution guarantees the equal rights of every person irrespective of race, and that domestic legislation criminalizes acts of racial discrimination, the Committee is concerned about the lack of information on the implementation of articles 2 and 4 of the Convention and about the difficulties which organizations promoting the objectives of the Convention have apparently encountered when seeking official registration.

491. Although the Committee notes that the State party's Constitution guarantees the enjoyment, without discrimination, of most of the rights mentioned in article 5 of the Convention, it remains acutely concerned about the effective enjoyment of these rights by persons belonging to ethnic groups, in particular by persons belonging to the Armenian, Russian and Kurdish minorities when seeking employment, housing and education.

492. The Committee shares the State Party's concern about the situation of displaced persons and refugees which has resulted from the conflict and the occupation of part of the State party's territory.

493. The Committee takes note of the information on the existing legal means for lodging complaints in cases of racial discrimination. It fears that the absence of complaints by victims of racial discrimination may indicate ignorance of or a lack of confidence in the available legal remedies.

E. Suggestions and recommendations

494. The Committee suggests that the State party analyse the findings of the forthcoming census to throw light on the relatively great emigration from the Russian-speaking and

Armenian minorities and on the economic and social situation of the other ethnic groups.

495. With regard to articles 2 and 4 of the Convention and in order better to evaluate the concrete implementation of these articles, the Committee requests the State party to include in its next periodic report relevant articles of the Constitution, Criminal Code and the Laws on Political Parties and Public Organizations and information on how these laws are applied.

496. The Committee recommends that the State party also include in its next report appropriate extracts from the Law on Citizenship so that the Committee can consider the extent to which it is in conformity with the Convention.

497. The Committee recommends that the State party utilize all available means, including international cooperation, to ameliorate the situation of displaced persons and refugees, especially regarding their access to education, employment and housing, pending their return to their houses under conditions of safety.

498. The Committee also recommends the State party to consider establishing a national human rights institution to facilitate the implementation of the Convention, in accordance with the Committee's general recommendation XVII.

499. With regard to the implementation of article 6 of the Convention, the Committee recommends that the State party take further steps to facilitate equal access to the courts and administrative bodies for all persons belonging to ethnic minorities and provide information on the right to seek just and adequate reparation for any damage suffered as a result of racial discrimination.

500. The Committee encourages the State party to continue cooperating with the Office of the United Nations High Commissioner for Human Rights in the protection of human rights, against racial discrimination. In this connection, the Committee recommends the State party to consider promoting the education and training on racial tolerance and human rights issues of law enforcement officials, in accordance with article 7 of the Convention and general recommendation XIII of the Committee.

501. The Committee noted with concern the allegations made by the reporting State that another State party is not giving effect to the provisions of the Convention. It therefore draws the attention of the State party to the procedure established in article 11 of the Convention.

502. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some members of the Committee requested that the possibility of such a declaration be considered. The Committee also recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

503. The Committee suggests to the State party that the report and these concluding observations be widely distributed to the public. The Committee recommends that the State party's next periodic report, due on 15 September 2001, be an updating report and that it address the points raised in these concluding observations.

Dominican Republic

504. The Committee considered the fourth to eighth periodic reports of the Dominican Republic (CERD/C/331/Add.1) at its 1364th and 1365th meetings (see CERD/C/SR.1364 and 1365), on 23 and 24 August 1999, and adopted, at its 1369th meeting (see CERD/C/SR.1369), on 26 August 1999, the following concluding observations.

A. Introduction

505. The Committee takes note of the submission by the Dominican Republic of its long overdue report. It expresses its satisfaction over the resumption of the dialogue with the State party and the willingness expressed by the delegation to comply with its reporting obligations under the Convention. It also welcomes the supplementary information provided by the State party in writing as well as during the oral presentation. The Committee regrets, however, that the report did not follow the Committee's reporting guidelines and lacked important information about the implementation of the Convention. The Committee also regrets that the State party has not yet submitted a core document.

B. Positive aspects

506. The Committee takes note of the information provided by the State party on the ethnic composition of the population and on domestic legislation governing the acquisition of nationality and education programmes intended to combat racial prejudices, although this information was not complete.

507. The Committee takes note of the recent acceptance by the State party of the jurisdiction of the Inter-American Court of Human Rights, as well as the decision of the Supreme Court that regulates the procedure for the exercise of the right of protection in cases of violation of fundamental rights by public authorities.

C. Principal subjects of concern

508. Concern is expressed at statements contained in the periodic report that no racial prejudice exists in the Dominican Republic and that the State party never perceived any need to condemn racial discrimination within the meaning of article 2 of the Convention, as no country can claim the total absence of racial discrimination in its territory or be confident that it will not appear in the future.

509. Concern is also expressed about the situation of the large number of Haitians living in the country, the majority of them illegally, in view of information that they, and in particular women and children, are often unable to enjoy the most basic economic and social rights, such as housing, education and health services.

510. The Committee is also concerned at reports that racial prejudices exist not only against Haitians but also against the darker-skinned Dominicans.

511. The inadequacy of the present legislation, including the Penal Code, to enable the State party fully to discharge its obligations under article 4 of the Convention is a further matter of concern.

D. Suggestions and recommendations

512. The Committee recommends the State party to take the necessary steps to meet the requirements of articles 2 and 5 of the Convention.

513. The Committee recommends that in the current process of reform of the Penal Code the provisions of article 4 of the Convention be taken into consideration.

514. The Committee recommends that the State party take urgent measures to ensure the enjoyment by persons of Haitian origin of their economic, social and cultural rights without discrimination. Efforts should be made, in particular, to improve their living conditions in the *bateyes* (shanty towns).

515. The Committee recommends that the State party address the requirements of article 6 of the Convention by facilitating access to the courts and other competent institutions for victims of racial discrimination and ensuring that the perpetrators of racist acts are brought to trial and the victims obtain adequate reparation or satisfaction.

516. The Committee recommends that the State party take all appropriate measures to give effect to the provisions of article 7 of the Convention, with a view to combating racial prejudices in society and promoting understanding and tolerance among individuals and groups with different characteristics in terms of race, colour, descent or national or ethnic origin.

517. Measures should be taken to ensure that law enforcement officials receive appropriate training in matters pertaining to the Convention. The Committee recalls in this respect its general recommendation XIII.

518. The Committee requests that the State party include, in its next periodic report, information about the implications of the proposed social security scheme for the prevention of racial discrimination. It also requests information about the reform of the Penal Code currently under way, in particular with respect to matters pertaining to the Convention.

519. The State party should take all appropriate steps to acquaint the population with the Convention and to publish the periodic reports as well as the Committee's concluding observations.

520. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties.

521. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some members of the Committee request that the possibility of making the declaration be considered.

522. The Committee recommends that the State party's next periodic report, due on 24 June 2000, be a comprehensive one, follow the reporting guidelines and take account of the points raised in these concluding observations.

Guinea

523. The Committee considered the combined second to eleventh periodic reports of Guinea (CERD/C/334/Add.1) at its 1366th and 1367th meetings (see CERD/C/SR.1366 and 1367), on 24 and 25 August 1999. At its 1370th meeting (see CERD/C/SR.1370), on 26 August 1999, it adopted the following concluding observations.

A. Introduction

524. The Committee welcomes the submission of the report of Guinea as well as the additional information provided in the core document (HRI/CORE/1/Add.80/Rev.1) and orally by the delegation. The Committee also expresses its satisfaction for the resumption of the dialogue with the State party and is encouraged by the commitment to continue the dialogue as a means of facilitating the implementation of the Convention in Guinea.

B. Factors and difficulties impeding the implementation of the Convention

525. While noting that Guinea is a developing country, the Committee notes that the structural adjustment programme and the influx of large numbers of refugees from Sierra Leone, Liberia and, more recently, Guinea-Bissau, has had an adverse impact on socio-economic, cultural and environmental development and has impeded the full implementation of the Convention.

C. Positive aspects

526. The Committee is encouraged by the fact that Guinea has acceded to the six main international instruments of the United Nations for the protection of human rights and that its Constitution as well as its domestic legislation gives prominence to respect for human dignity and provides for the principle of equality as well as for the prohibition of racial discrimination.

527. The Committee notes with appreciation that the International Convention on the Elimination of All Forms of Racial Discrimination and other international instruments prevail over the domestic legislation and are binding on the judicial and other authorities of the State.

528. The Committee notes with appreciation that the State party, in cooperation with the Office of the United Nations High Commissioner for Human Rights, has introduced human rights training for police officers in accordance with general recommendation XIII and has undertaken training on reporting to international human rights treaty bodies.

529. While noting the impact of the influx of refugees, the Committee welcomes the willingness and acceptance of the State party to receive over 1 million refugees and asylum-seekers from neighbouring countries. In this regard, the Committee also notes with appreciation that the State party's domestic legislation provides for the protection of and asylum of refugees who have fled their countries because of racial or ethnic discrimination.

D. Principal subjects of concern

530. While noting that the State party's Constitution establishes the principle of equality and that domestic legislation establishes that all acts of racial discrimination are punishable by law, concern is expressed at the lack of information on the implementation of articles 2 and 4 of the Convention, especially on how these principles are applied by judges, lawyers and civil servants.

531. While the Committee notes that articles 109 and 111 of the Penal Code reflect article 4 (a) of the Convention and that the Constitution reflects article 4 (c), the lack of information regarding the remaining sections of article 4 is noted with concern.

532. While the Committee recognizes the importance of national unity and the need to avoid regionalism within the State party, concern is expressed that any measures taken to this end should not lead to racial discrimination.

533. Concern is expressed about the lack of information regarding the practical implementation of article 5 of the Convention. In this connection, the Committee is concerned about the destruction by the State of more than 10,000 homes in the Conakry Ratoma neighbourhood, belonging mainly to members of the Puhlar ethnic group; the resulting riots which led to the death of eight persons; and the inter-ethnic tension which remains in that area. The Committee is also concerned about the lack of compensation for those persons whose property was expropriated.

534. The Committee is particularly concerned that the recent developments in both the public and private sectors may have had a more adverse effect on some ethnic groups.

535. The Committee takes note of the information on the existing legal mechanisms to lodge complaints in cases of racial discrimination. In this connection and in view of the absence of complaints of racial discrimination in the State party, attention is drawn to the fact that the absence of complaints and legal action by victims of racism is not necessarily a positive sign and that it could be an indicator of lack of awareness of the existence of available legal remedies in cases of racial discrimination, and that members of the public may not be sufficiently aware of the protection against racial discrimination provided by the Convention.

E. Suggestions and recommendations

536. With regard to articles 2 and 4 of the Convention and in order better to evaluate the concrete implementation of these articles, the Committee requests the State party to include in its next periodic report additional information on how these provisions are applied by judges, lawyers and civil servants.

537. With reference to the law concerning acts of regionalism, the Committee encourages the State party to ensure that any measures taken in this connection do not lead to racial discrimination.

538. The Committee recommends that the State party include in its next report the text of the Law on Citizenship for the Committee to evaluate the limitations on foreigners and stateless persons on the enjoyment of the rights enshrined in article 5 of the Convention. In addition, the

State party is invited to provide further information on the effective enjoyment of the political, economic and social rights enumerated in article 5 of the Convention, in particular by persons belonging to ethnic groups.

539. The Committee invites the State party to include in its next report further information on the situation in Conakry Ratoma and the measures taken to address inter-ethnic tension in that area and to accommodate and/or compensate those persons whose properties were expropriated.

540. The Committee recommends that the State party consider the establishment of a national institution to facilitate the implementation of the Convention, in accordance with the Committee's general recommendation XVII.

541. With regard to the implementation of article 6 of the Convention, the Committee requests the State party to include information in its next report on measures taken or envisaged for improving public awareness of the principles and provisions of the Convention.

542. The Committee encourages the State party to continue working in cooperation with the Office of the United Nations High Commissioner for Human Rights in the protection and promotion of human rights, including the elimination of racial discrimination. In this connection, the Committee recommends that the State party consider providing education and training on racial tolerance and human rights issues to the population at large and, in particular, to teachers and school administrators, in accordance with article 7 of the Convention and general recommendation XIII of the Committee.

543. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some members of the Committee requested that the possibility of such a declaration be considered. The Committee also recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

544. The Committee suggests to the State party that the report and these concluding observations be widely distributed. The Committee recommends that the State party's next periodic report, due on 13 April 2000, be an updating report and that it address the points raised in the present concluding observations.

Chapter IV

Consideration of communications under article 14 of the Convention

545. Under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, individuals or groups of individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and who have exhausted all available domestic remedies may submit written communications to the Committee on the Elimination of Racial Discrimination for consideration. A list of States parties which have recognized the competence of the Committee to consider such communications can be found in annex I.B.

546. Consideration of communications under article 14 of the Convention takes place in closed meetings (rule 88 of the Committee's rules of procedure). All documents pertaining to the work of the Committee under article 14 (submissions from the parties and other working documents of the Committee) are confidential.

547. The Committee began its work under article 14 of the Convention at its thirtieth session, in 1984. At its thirty-sixth session (August 1988), the Committee adopted its opinion on communication No. 1/1984 (*Yilmaz Dogan v. the Netherlands*). At its thirty-ninth session, on 18 March 1991, the Committee adopted its opinion on communication No. 2/1989 (*Demba Talibe v. France*). At its forty-second session, on 16 March 1993, the Committee, acting under rule 94, paragraph 7, of its rules of procedure, declared admissible and adopted its opinion on communication No. 4/1991 (*L. K. v. the Netherlands*). At its forty-fourth session, on 15 March 1994, the Committee adopted its opinion on communication No. 3/1991 (*Michel L. N. Narrainen v. Norway*). During its forty-sixth session (March 1995), the Committee declared inadmissible communication No. 5/1994 (*C. P. v. Denmark*). At its fifty-first session (August 1997), the Committee declared inadmissible communication No. 7/1995 (*Barbaro v. Australia*). At its fifty-third session (August 1998) the Committee declared inadmissible communication No. 9/1997 (*D. S. v. Sweden*).

548. At its fifty-fourth session (March 1999) the Committee adopted its opinion on communication No. 8/1996 (*B. M. S. v. Australia*), which is reproduced in full in annex III.A. The communication concerned an Australian doctor of Indian origin who claimed to be a victim of violations of the Convention by Australia in that he was required to pass an examination designed for overseas trained doctors in order to be able to practise medicine in Australia. The main issue before the Committee was whether the examination and the quota system for overseas trained doctors respected the author's right, under article 5 (e) (i) of the Convention, to work and to free choice of employment. The Committee noted in this respect that all overseas trained doctors were subjected to the same quota system and were required to sit the same written and clinical examinations, irrespective of their race or national origin. Furthermore, on the basis of the information provided by the author the Committee could not conclude that the system worked to the detriment of persons of a particular race or national origin. The Committee was therefore of the opinion that the facts submitted to it did not disclose a violation of the Convention.

549. Also at its fifty-fourth session, the Committee adopted its opinion on communication No. 10/1997 (*Ziad Ben Ahmed Habassi v. Denmark*), which is reproduced in full in annex III.A. The communication concerned a Tunisian citizen residing in Denmark who claimed that the Danish authorities had not properly investigated his complaint of discrimination after he was refused a loan by a bank on the sole ground of his non-Danish nationality. The Committee was of the view that nationality was not the most appropriate requisite when investigating a person's will or capacity to reimburse a loan. The applicant's permanent residence or the place where his employment, property or family ties were to be found might be more relevant in that context. Accordingly, the Committee found that, on the basis of article 2, paragraph (d), of the Convention, it was appropriate to initiate a proper investigation into the real reasons behind the bank's loan policy vis-à-vis foreign residents, in order to ascertain whether or not criteria involving racial discrimination, within the meaning of article 1 of the Convention, were being applied. The Committee also found that the steps taken by the police and the State Prosecutor were insufficient to determine whether or not an act of racial discrimination had taken place. The Committee was therefore of the view that the author had been denied effective remedy within the meaning of article 6 of the Convention in connection with article 2 (d).

550. At its fifty-fifth session (August 1999), the Committee adopted its opinion on communication No. 6/1995 (*Z.U.B.S. v. Australia*), which is reproduced in full in annex III.B. The communication concerned an Australian citizen of Pakistani origin who claimed to have been subjected to discrimination on racial grounds in the terms of his appointment, in his employment conditions and in the termination of his employment with the New South Wales Fire Brigade. He also claimed that his complaint with the national authorities had not been properly investigated. The Committee found

that, as a general rule, it was for the domestic courts of States parties to the Convention to review and evaluate the facts and evidence in a particular case. After reviewing the information provided the Committee considered that the Equal Opportunities Tribunal had examined the case in a thorough and equitable manner and concluded that the facts, as submitted, did not disclose a violation of the Convention by the State party.

551. Responding to suggestions and recommendations formulated by the Committee in its opinion on communication No. 10/1997 (*Ziad Ben Ahmed Habassi v. Denmark*), the State party, in a note verbale dated 27 May 1999, informed the Committee that the Ministry of Justice had taken due note that the Committee assessed the factual circumstances differently than the Public Prosecutor and found that the police investigation had been insufficient and that the possibility of bringing a civil declaratory action was not considered an effective remedy compared to criminal proceedings at the courts. Furthermore, the police and prosecution authorities involved in the case had been informed of the Committee's opinion and arrangements had been made for it to be transmitted to relevant financial institutions. The State party also informed the Committee that it would provide compensation for reasonable and specified expenses for judicial assistance to the author of the communication.

552. The Committee acknowledged this information as a follow-up to the opinion adopted by the Committee under article 14. The Committee was aware that the follow-up measures raised the issue of just and adequate reparation or satisfaction referred to in article 6 of the Convention. The Committee expected to examine this issue both in general and in connection with the fourteenth periodic report of the State party that was awaiting consideration by the Committee.

Chapter V

Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention

553. Under article 15 of the Convention, the Committee on the Elimination of Racial Discrimination is empowered to consider copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other Territories to which General Assembly resolution 1514 (XV) applies, transmitted to it by the competent bodies of the United Nations, and to submit to them and to the General Assembly its expressions of opinion and recommendations relating to the principles and objectives of the Convention in those Territories.

554. At the request of the Committee, Mr. van Boven examined the documents made available to the Committee in order for it to perform its functions pursuant to article 15 of the Convention. At its 1345th meeting (fifty-fifth session), Mr. van Boven presented his report and took into account the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples covering its work during 1998 (A/53/23, part I) and copies of the working papers on the 17 Territories prepared by the Secretariat for the Special Committee and the Trusteeship Council in 1997 and listed in document CERD/C/368, as well as in annex IV of the present report.

555. The Committee noted, as it had done in the past, that it was difficult to fulfil its functions under article 15 of the Convention as a result of the absence of any copies of petitions pursuant to paragraph 2 (a) and due to the fact that the copies of the reports received pursuant to paragraph 2 (b) contain only scant information directly related to the principles and objectives of the Convention.

556. The Committee was aware that certain States parties had submitted over the years information on the implementation of the Convention in Territories they are administering or which are otherwise under their jurisdiction and to which article 15 also applies. This practice based on the reporting obligations of States parties pursuant to article 9 of the Convention must be encouraged and be of a consistent nature. The Committee is mindful, however, that the procedures under article 9 of the Convention should be clearly distinguished from those under article 15.

557. The Committee noted that in the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples reference is made to the relations between the Special Committee and the Committee and to the Special Committee's continuous monitoring of related developments in Territories, having regard to the relevant provisions of article 15 of the Convention.[5] The Committee further noted, however, that issues concerning racial discrimination, and directly related to the principles and objectives of the Convention, are not reflected in the sections of the report of the Special Committee which deal with review of work and further work of the Special Committee.

558. The Committee wishes to submit the following opinions and recommendations:

(a) The Committee has again not received copies of any petitions pursuant to article 15, paragraph 2 (a) of the Convention. In case pertinent petitions would become available, the Committee requests the Secretary-General that it be provided with copies of these petitions and any other information relevant to the objectives of the Convention and available to him regarding the Territories mentioned in article 15, paragraph 2 (a);

(b) In the materials to be prepared by the Secretariat for the Special Committee and to be made available by the Secretary-General to the Committee on the Elimination of Racial Discrimination pursuant to paragraph 2 (b) of article 15 of the Convention more systematic attention should be given, also in the light of the terms of General Assembly resolution 1514 (XV), to human rights aspects and in particular to matters directly related to the principles and objectives of the International Convention on the Elimination of All Forms of Racial Discrimination. The Special Committee is invited to take this concern into account when devising its work;

(c) States parties which are administering Non-Self-Governing Territories or otherwise exercising jurisdiction over Territories are requested to include or to continue to include in their reports to be submitted pursuant to article 9, paragraph 1, relevant information on the implementation of the Convention in all Territories under their jurisdiction.

Chapter VI

Action taken by the General Assembly at its fifty-third session

559. At its fifty-fifth session, the Committee considered the following subjects under this item: (a) the annual report of the Committee submitted to the General Assembly at its fifty-second session; and (b) the effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights. For its consideration of this item at its fifty-fifth session, the Committee had before it the following documents:

(a) General Assembly resolution 53/131 on the report of the Committee on the Elimination of Racial Discrimination;

(b) Summary records of the Third Committee of the General Assembly (A/C.3/53/SR.23-26, 36, 46 and 49);

(c) Report of the Third Committee (A/53/623);

(d) Report of the Fifth Committee (A/53/727);

(e) General Assembly resolution 53/138, on effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights;

(f) Note by the Secretary-General transmitting to the General Assembly the report of the 9th meeting of persons chairing human rights treaty bodies (A/53/125);

(g) Note by the Secretary-General transmitting to the General Assembly the report of the 10th meeting of persons chairing human rights treaty bodies (A/53/432);

(h) Report of the Secretary-General on the effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (A/53/469);

(i) Summary records of the Third Committee of the General Assembly (A/C.3/53/SR.28, 29, 36, 46 and 49);

(j) Report of the Third Committee (A/53/625/Add.1).

A. Annual report submitted by the Committee on the Elimination of Racial Discrimination under article 9, paragraph 2, of the Convention

560. At its fifty-fifth session, the Committee noted that the General Assembly had commended its work regarding the examination of reports and action on communications under article 14 of the Convention. It was further noted that the General Assembly had also commended its working methods, including its procedure for reviewing the implementation of the Convention in States whose reports are seriously overdue. The Committee welcomed that its contribution to the prevention of racial discrimination, including early warning measures and urgent procedures, had also been commended in resolution 53/131.

561. The Committee welcomed the General Assembly's request to States parties to accelerate their domestic ratification procedures with regard to the amendments to article 8, paragraph 6, of the Convention, concerning the financing of the Committee.

B. Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights

562. At its fifty-fifth session, the Committee took note of the recommendations in the reports of the 9th and 10th meetings of persons chairing human rights treaty bodies, together with General Assembly resolution 53/138, on effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights. It indicated that it would follow with interest Secretariat action with respect to these recommendations.

Chapter VII

Submission of reports by States parties under article 9 of the Convention

A. Reports received by the Committee

563. At its thirty-eighth session in 1988, the Committee decided to accept the proposal of the States parties that States parties submit a comprehensive report every four years and a brief updating report in the two-year interim. The table lists reports received from 22 August 1998 to 27 August 1999.

Reports received during the period under review (22 August 1998 to 27 August 1999)

State party	*Type of report*	*Date on which the report was due*	*Document symbol*
Argentina	Fifteenth report	4 January 1998	CERD/C/338/Add.9
Australia	Tenth report	30 October 1994	CERD/C/335/Add.2
	Eleventh report	30 October 1996	
	Twelfth report	30 October 1998	
Azerbaijan	Initial report	15 September 1997	CERD/C/350/Add.1
	Second report	15 September 1999	
Bahrain	Initial report	26 April 1991	CERD/C/353/Add.1
	Second report	26 April 1993	
	Third report	26 April 1995	
	Fourth report	26 April 1997	
	Fifth report	26 April 1999	
Denmark	Fourteenth report	8 January 1999	CERD/C/362/Add.1
Dominican Republic	Fourth report	24 June 1990	CERD/C/331/Add.1
	Fifth report	24 June 1992	
	Sixth report	24 June 1994	
	Seventh report	24 June 1996	
	Eighth report	24 June 1998	
Estonia	Initial report	20 November 1992	CERD/C/329/Add.2
	Second report	20 November 1994	
	Third report	20 November 1996	
	Fourth report	20 November 1998	
Finland	Fifteenth report	13 August 1999	CERD/C/363/Add.2
France	Twelfth report	27 August 1994	CERD/C/337/Add.5
	Thirteenth report	27 August 1996	
	Fourteenth report	27 August 1998	
Guinea	Second report	13 April 1980	CERD/C/334/Add.1
	Third report	13 April 1982	
	Fourth report	13 April 1984	
	Fifth report	13 April 1986	
	Sixth report	13 April 1988	
	Seventh report	13 April 1990	
	Eighth report	13 April 1992	
	Ninth report	13 April 1994	
	Tenth report	13 April 1996	
	Eleventh report	13 April 1998	

State party	*Type of report*	*Date on which the report was due*	*Document symbol*
Haiti	Tenth report	18 January 1992	CERD/C/336/Add.1
	Eleventh report	18 January 1994	
	Twelfth report	18 January 1996	
	Thirteenth report	18 January 1998	
Holy See	Thirteenth report	31 May 1994	CERD/C/338/Add.11
	Fourteenth report	31 May 1996	
	Fifteenth report	31 May 1998	
Iceland	Fifteenth report	4 January 1998	CERD/C/338/Add.10
Iran (Islamic Republic of)	Thirteenth report	4 January 1994	CERD/C/338/Add.8
	Fourteenth report	4 January 1996	
	Fifteenth report	4 January 1998	
Kyrgyzstan	Initial report	4 October 1998	CERD/C/326/Add.1
Latvia	Initial report	14 May 1993	CERD/C/309/Add.1
	Second report	14 May 1995	
	Third report	14 May 1997	
Lesotho	Seventh report	4 December 1984	CERD/C/337/Add.1
	Eighth report	4 December 1986	
	Ninth report	4 December 1988	
	Tenth report	4 December 1990	
	Eleventh report	4 December 1992	
	Twelfth report	4 December 1994	
	Thirteenth report	4 December 1996	
	Fourteenth report	4 December 1998	
Malta	Thirteenth report	26 June 1996	CERD/C/337Add.3
	Fourteenth report	26 June 1998	
Mauritius	Thirteenth report	29 June 1997	CERD/C/362/Add.2
	Fourteenth report	29 June 1999	
Nepal	Fourteenth report	1 March 1998	CERD/C/334/Add.3
Netherlands	Thirteenth report	9 January 1997	CERD/C/362/Add.4
	Fourteenth report	9 January 1999	
Romania	Twelfth report	15 October 1993	CERD/C/363/Add.1
	Thirteenth report	15 October 1995	
	Fourteenth report	15 October 1997	
	Fifteenth report	15 October 1999	
Rwanda	Eighth report	16 May 1990	CERD/C/335/Add.1
	Ninth report	16 May 1992	
	Tenth report	16 May 1994	
	Eleventh report	16 May 1996	
	Twelfth report	16 May 1998	
Slovakia	Initial report	28 May 1994	CERD/C/328/Add.1
	Second report	28 May 1996	
	Third report	28 May 1998	
Sweden	Thirteenth report	5 January 1997	CERD/C/362/Add.5
	Fourteenth report	5 January 1999	
Tonga	Fourteenth report	17 March 1999	CERD/C/362/Add.3

State party	*Type of report*	*Date on which the report was due*	*Document symbol*
United Kingdom of Great Britain and Northern Ireland	Fifteenth report	6 April 1998	CERD/C/338/Add.12
Zimbabwe	Second report Third report Fourth report	12 June 1994 12 June 1996 12 June 1998	CERD/C/329/Add.1

B. Reports not yet received by the Committee

564. The table below lists reports which were due before the end of the fifty-fifth session but which have not yet been received.

Reports due before the closing date of the fifty-fifth session (27 August 1999) but which have not yet been received

State party	*Type of report*	*Date on which the report was due*	*Number of reminders sent*
Afghanistan	Second report	5 August 1986	10
	Third report	5 August 1988	8
	Fourth report	5 August 1990	8
	Fifth report	5 August 1992	5
	Sixth report	5 August 1994	4
	Seventh report	5 August 1996	3
	Eighth report	5 August 1998	1
Albania	Initial report	10 June 1995	3
	Second report	10 June 1997	2
	Third report	10 June 1999	-
Algeria	Thirteenth report	15 March 1997	2
	Fourteenth report	15 March 1999	-
Antigua and Barbuda	Initial report	24 November 1989	4
	Second report	24 November 1991	4
	Third report	24 November 1993	3
	Fourth report	24 November 1995	3
	Fifth report	24 November 1997	2
Armenia	Third report	23 July 1998	1
Austria	Fourteenth report	8 June 1999	-
Bahamas	Fifth report	4 September 1984	12
	Sixth report	4 September 1986	8
	Seventh report	4 September 1988	6
	Eighth report	4 September 1990	6
	Ninth report	4 September 1992	5
	Tenth report	4 September 1994	4
	Eleventh report	4 September 1996	3
	Twelfth report	4 September 1998	1
Bangladesh	Seventh report	11 July 1992	4
	Eighth report	11 July 1994	4
	Ninth report	11 July 1996	3
	Tenth report	11 July 1998	1

State party	*Type of report*	*Date on which the report was due*	*Number of reminders sent*
Barbados	Eighth report	8 December 1987	7
	Ninth report	8 December 1989	7
	Tenth report	8 December 1991	4
	Eleventh report	8 December 1993	3
	Twelfth report	8 December 1995	3
	Thirteenth report	8 December 1997	1
Belarus	Fifteenth report	8 May 1998	1
Belgium	Eleventh report	6 September 1996	3
	Twelfth report	6 September 1998	1
Bolivia	Thirteenth report	22 October 1995	3
	Fourteenth report	22 October 1997	2
Bosnia and Herzegovina[b]	Initial report	16 July 1994	3
	Second report	16 July 1996	3
	Third report	16 July 1998	1
Botswana	Sixth report	22 March 1985	11
	Seventh report	22 March 1987	8
	Eighth report	22 March 1989	6
	Ninth report	22 March 1991	5
	Tenth report	22 March 1993	3
	Eleventh report	22 March 1995	3
	Twelfth report	22 March 1997	2
	Thirteenth report	22 March 1999	-
Brazil	Fourteenth report	4 January 1996	3
	Fifteenth report	4 January 1998	1
Bulgaria	Fifteenth report	4 January 1998	1
Burkina Faso	Twelfth report	17 August 1997	2
	Thirteenth report	17 August 1999	-
Burundi	Eleventh report	26 November 1998	1
Cambodia	Eighth report	28 December 1998	-
Cameroon	Fourteenth report	24 July 1998	1
Canada	Thirteenth report	13 November 1995	3
	Fourteenth report	13 November 1997	2
Cape Verde	Third report	2 November 1984	12
	Fourth report	2 November 1986	9
	Fifth report	2 November 1988	7
	Sixth report	2 November 1990	6
	Seventh report	2 November 1992	4
	Eighth report	2 November 1994	4
	Ninth report	2 November 1996	3
	Tenth report	2 November 1998	1
Central African Republic	Eighth report	15 April 1986	10
	Ninth report	15 April 1988	8
	Tenth report	15 April 1990	8
	Eleventh report	15 April 1992	5
	Twelfth report	15 April 1994	4
	Thirteenth report	15 April 1996	3
	Fourteenth report	15 April 1998	1
Chad	Tenth report	16 September 1996	3
	Eleventh report	16 September 1998	1

State party	*Type of report*	*Date on which the report was due*	*Number of reminders sent*
China	Eighth report	28 January 1997	2
	Ninth report	28 January 1999	-
Congo	Initial report	10 August 1989	4
	Second report	10 August 1991	4
	Third report	10 August 1993	3
	Fourth report	10 August 1995	3
	Fifth report	10 August 1997	2
	Sixth report	10 August 1999	-
Côte d'Ivoire	Fifth report	3 February 1982	17
	Sixth report	3 February 1984	13
	Seventh report	3 February 1986	9
	Eighth report	3 February 1988	6
	Ninth report	3 February 1990	6
	Tenth report	3 February 1992	5
	Eleventh report	3 February 1994	4
	Twelfth report	3 February 1996	3
	Thirteenth report	3 February 1998	1
Croatia	Fourth report	8 October 1998	1
Cuba	Fourteenth report	16 March 1999	-
Cyprus	Fifteenth report	4 January 1998	1
Czech Republic[7]	Third report	1 January 1998	1
Democratic Republic of the Congo	Eleventh report	21 May 1997	2
	Twelfth report	21 May 1999	-
Ecuador	Thirteenth report	4 January 1994	3
	Fourteenth report	4 January 1996	3
	Fifteenth report	4 January 1998	1
Egypt	Thirteenth report	4 January 1994	3
	Fourteenth report	4 January 1996	3
	Fifteenth report	4 January 1998	1
El Salvador	Ninth report	30 December 1996	2
	Tenth report	30 December 1998	-
Ethiopia	Seventh report	23 July 1989	4
	Eighth report	23 July 1991	4
	Ninth report	23 July 1993	3
	Tenth report	23 July 1995	3
	Eleventh report	23 July 1997	2
	Twelfth report	23 July 1999	-
Fiji	Sixth report	11 January 1984	12
	Seventh report	11 January 1986	8
	Eighth report	11 January 1988	6
	Ninth report	11 January 1990	6
	Tenth report	11 January 1992	5
	Eleventh report	11 January 1994	4
	Twelfth report	11 January 1996	3
	Thirteenth report	11 January 1998	1
Gabon	Tenth report	30 March 1999	-

State party	*Type of report*	*Date on which the report was due*	*Number of reminders sent*
Gambia	Second report	28 January 1982	17
	Third report	28 January 1984	13
	Fourth report	28 January 1986	9
	Fifth report	28 January 1988	6
	Sixth report	28 January 1990	6
	Seventh report	28 January 1992	5
	Eighth report	28 January 1994	4
	Ninth report	28 January 1996	3
	Tenth report	28 January 1998	1
Germany	Fifteenth report	15 June 1998	1
Greece	Twelfth report	18 July 1993	3
	Thirteenth report	18 July 1995	3
	Fourteenth report	18 July 1997	2
	Fifteenth report	18 July 1999	-
Guatemala	Eighth report	17 February 1998	1
Guyana	Initial report	17 March 1978	24
	Second report	17 March 1980	20
	Third report	17 March 1982	16
	Fourth report	17 March 1984	13
	Fifth report	17 March 1986	9
	Sixth report	17 March 1988	6
	Seventh report	17 March 1990	6
	Eighth report	17 March 1992	5
	Ninth report	17 March 1994	4
	Tenth report	17 March 1996	3
	Eleventh report	17 March 1998	1
Hungary	Fourteenth report	4 January 1996	3
	Fifteenth report	4 January 1998	1
India	Fifteenth report	4 January 1998	1
Iraq	Fifteenth report	13 February 1999	-
Israel	Tenth report	2 February 1998	1
Italy	Twelfth report	4 February 1999	-
Jamaica	Eighth report	4 July 1986	10
	Ninth report	4 July 1988	8
	Tenth report	4 July 1990	8
	Eleventh report	4 July 1992	5
	Twelfth report	4 July 1994	4
	Thirteenth report	4 July 1996	3
	Fourteenth report	4 July 1998	1
Japan	Initial report	14 January 1997	2
	Second report	14 January 1999	-
Jordan	Thirteenth report	29 June 1999	-
Kuwait	Fifteenth report	4 January 1998	1
Lao People's Democratic Republic	Sixth report	24 March 1985	10
	Seventh report	24 March 1987	7
	Eighth report	24 March 1989	6
	Ninth report	24 March 1991	4
	Tenth report	24 March 1993	3
	Eleventh report	24 March 1995	3
	Twelfth report	24 March 1997	2
	Thirteenth report	24 March 1999	-

State party	*Type of report*	*Date on which the report was due*	*Number of reminders sent*
Latvia	Fourth report	14 May 1999	-
Lebanon	Fourteenth report	12 December 1998	-
Liberia	Initial report	5 December 1977	24
	Second report	5 December 1979	20
	Third report	5 December 1981	16
	Fourth report	5 December 1983	13
	Fifth report	5 December 1985	9
	Sixth report	5 December 1987	6
	Seventh report	5 December 1989	6
	Eighth report	5 December 1991	5
	Ninth report	5 December 1993	4
	Tenth report	5 December 1995	3
	Eleventh report	5 December 1997	1
Libyan Arab Jamahiriya	Fifteenth report	4 January 1998	1
Lithuania	Initial report	9 January 1999	-
Luxembourg	Tenth report	31 May 1997	2
	Eleventh report	31 May 1999	-
Madagascar	Tenth report	9 March 1988	7
	Eleventh report	9 March 1990	7
	Twelfth report	9 March 1992	4
	Thirteenth report	9 March 1994	3
	Fourteenth report	9 March 1996	3
	Fifteenth report	9 March 1998	1
Malawi	Initial report	11 July 1997	2
	Second report	11 July 1999	-
Maldives	Fifth report	24 May 1993	3
	Sixth report	24 May 1995	3
	Seventh report	24 May 1997	2
	Eighth report	24 May 1999	-
Mali	Seventh report	15 August 1987	7
	Eighth report	15 August 1989	7
	Ninth report	15 August 1991	5
	Tenth report	15 August 1993	3
	Eleventh report	15 August 1995	3
	Twelfth report	15 August 1997	2
	Thirteenth report	15 August 1999	-
Mexico	Twelfth report	22 March 1998	1
Monaco	Initial report	27 October 1996	1
Morocco	Fourteenth report	17 January 1998	1
Mozambique	Second report	18 May 1986	10
	Third report	18 May 1988	8
	Fourth report	18 May 1990	8
	Fifth report	18 May 1992	5
	Sixth report	18 May 1994	4
	Seventh report	18 May 1996	3
	Eighth report	18 May 1998	1
Namibia	Eighth report	11 December 1997	1
New Zealand	Twelfth report	22 December 1995	3
	Thirteenth report	22 December 1997	1

State party	*Type of report*	*Date on which the report was due*	*Number of reminders sent*
Nicaragua	Tenth report	17 March 1997	2
	Eleventh report	17 March 1999	-
Niger	Fifteenth report	4 January 1998	1
Nigeria	Fourteenth report	4 January 1996	3
	Fifteenth report	4 January 1998	1
Pakistan	Fifteenth report	4 January 1998	1
Panama	Fifteenth report	4 January 1998	1
Papua New Guinea	Second report	26 February 1985	11
	Third report	26 February 1987	8
	Fourth report	26 February 1989	6
	Fifth report	26 February 1991	5
	Sixth report	26 February 1993	3
	Seventh report	26 February 1995	3
	Eighth report	26 February 1997	2
	Ninth report	26 February 1999	-
Peru	Fourteenth report	25 October 1998	1
Philippines	Fifteenth report	4 January 1998	1
Poland	Fifteenth report	4 January 1998	1
Qatar	Ninth report	21 August 1993	3
	Tenth report	21 August 1995	3
	Eleventh report	21 August 1997	2
	Twelfth report	21 August 1999	-
Republic of Moldova	Initial report	25 February 1994	3
	Second report	25 February 1996	3
	Third report	25 February 1998	1
Russian Federation	Fifteenth report	6 March 1998	1
Saint Lucia	Initial report	16 March 1991	4
	Second report	16 March 1993	4
	Third report	16 March 1995	3
	Fourth report	16 March 1997	2
	Fifth report	16 March 1999	-
Saint Vincent and the Grenadines	Second report	9 December 1984	11
	Third report	9 December 1986	8
	Fourth report	9 December 1988	6
	Fifth report	9 December 1990	5
	Sixth report	9 December 1992	3
	Seventh report	9 December 1994	3
	Eighth report	9 December 1996	2
	Ninth report	9 December 1998	-
Saudi Arabia	Initial report	22 October 1998	1
Senegal	Eleventh report	19 May 1993	3
	Twelfth report	19 May 1995	3
	Thirteenth report	19 May 1997	2
	Fourteenth report	19 May 1999	-

State party	*Type of report*	*Date on which the report was due*	*Number of reminders sent*
Seychelles	Sixth report	6 April 1989	4
	Seventh report	6 April 1991	4
	Eighth report	6 April 1993	3
	Ninth report	6 April 1995	3
	Tenth report	6 April 1997	2
	Eleventh report	6 April 1999	-
Sierra Leone	Fourth report	4 January 1976	27
	Fifth report	4 January 1978	23
	Sixth report	4 January 1980	21
	Seventh report	4 January 1982	17
	Eighth report	4 January 1984	13
	Ninth report	4 January 1986	9
	Tenth report	4 January 1988	6
	Eleventh report	4 January 1990	6
	Twelfth report	4 January 1992	5
	Thirteenth report	4 January 1994	4
	Fourteenth report	4 January 1996	3
	Fifteenth report	4 January 1998	1
	Supplementary	31 March 1975	1
Slovenia	Initial report	6 July 1993	3
	Second report	6 July 1995	3
	Third report	6 July 1997	2
	Fourth report	6 July 1999	-
Solomon Islands	Second report	16 April 1985	11
	Third report	16 April 1987	8
	Fourth report	16 April 1989	6
	Fifth report	16 April 1991	5
	Sixth report	16 April 1993	3
	Seventh report	16 April 1995	3
	Eighth report	16 April 1997	2
	Ninth report	16 April 1999	-
Somalia	Fifth report	25 September 1984	12
	Sixth report	25 September 1986	9
	Seventh report	25 September 1988	7
	Eighth report	25 September 1990	6
	Ninth report	25 September 1992	5
	Tenth report	25 September 1994	4
	Eleventh report	25 September 1996	3
	Twelfth report	25 September 1998	1
Sri Lanka	Seventh report	20 March 1995	3
	Eighth report	20 March 1997	2
	Ninth report	20 March 1999	-
Sudan	Ninth report	20 April 1994	3
	Tenth report	20 April 1996	3
	Eleventh report	20 April 1998	1
Suriname	Initial report	14 April 1985	11
	Second report	14 April 1987	8
	Third report	14 April 1989	6
	Fourth report	14 April 1991	5
	Fifth report	14 April 1993	3
	Sixth report	14 April 1995	3
	Seventh report	14 April 1997	2
	Eighth report	14 April 1999	-
Swaziland	Fifteenth report	7 May 1998	1

State party	*Type of report*	*Date on which the report was due*	*Number of reminders sent*
Switzerland	Second report	29 December 1997	1
Tajikistan	Initial report	10 February 1996	3
	Second report	10 February 1998	1
The former Yugoslav Republic of Macedonia	Fourth report	17 September 1998	-
Togo	Sixth report	1 October 1983	13
	Seventh report	1 October 1985	9
	Eighth report	1 October 1987	6
	Ninth report	1 October 1989	6
	Tenth report	1 October 1991	5
	Eleventh report	1 October 1993	4
	Twelfth report	1 October 1995	3
	Thirteenth report	1 October 1997	2
Trinidad and Tobago	Eleventh report	3 November 1994	3
	Twelfth report	3 November 1996	3
	Thirteenth report	3 November 1998	1
Tunisia	Thirteenth report	4 January 1994	3
	Fourteenth report	4 January 1996	3
	Fifteenth report	4 January 1998	1
Turkmenistan	Initial report	29 October 1995	3
	Second report	29 October 1997	2
Uganda	Second report	21 December 1983	13
	Third report	21 December 1985	9
	Fourth report	21 December 1987	7
	Fifth report	21 December 1989	6
	Sixth report	21 December 1991	5
	Seventh report	21 December 1993	4
	Eighth report	21 December 1995	3
	Ninth report	21 December 1997	1
Ukraine	Fifteenth report	6 April 1998	1
United Arab Emirates	Twelfth report	20 July 1997	2
	Thirteenth report	20 July 1999	-
United Republic of Tanzania	Eighth report	26 November 1987	7
	Ninth report	26 November 1989	7
	Tenth report	26 November 1991	4
	Eleventh report	26 November 1993	3
	Twelfth report	26 November 1995	3
	Thirteenth report	26 November 1997	2
United States of America	Initial report	20 November 1995	3
	Second report	20 November 1997	2
Uzbekistan	Initial report	28 October 1996	3
	Second report	28 October 1998	1
Venezuela	Fourteenth report	4 January 1996	3
	Fifteenth report	4 January 1998	1
Viet Nam	Sixth report	9 July 1993	3
	Seventh report	9 July 1995	3
	Eighth report	9 July 1997	2
	Ninth report	9 July 1999	-

State party	*Type of report*	*Date on which the report was due*	*Number of reminders sent*
Yemen	Eleventh report	17 November 1993	3
	Twelfth report	17 November 1995	3
	Thirteenth report	17 November 1997	2
Yugoslavia[8]	Fifteenth report	4 January 1998	1
Zambia	Twelfth report	5 March 1995	3
	Thirteenth report	5 March 1997	2
	Fourteenth report	5 March 1999	-

C. Action taken by the Committee to ensure submission of reports by States parties

565. At its fifty-fourth and fifty-fifth sessions, the Committee reviewed the question of delays and non-submission of reports by States parties in accordance with their obligations under article 9 of the Convention.

566. At its forty-second session, the Committee, having emphasized that the delays in reporting by States parties hampered it in monitoring implementation of the Convention, decided that it would continue to proceed with the review of the implementation of the provisions of the Convention by the States parties whose reports were excessively overdue, by five years or more. In accordance with a decision taken at its thirty-ninth session, the Committee agreed that this review would be based upon the last reports submitted by the State party concerned and their consideration by the Committee. At its forty-ninth session, the Committee further decided that States parties whose initial reports were excessively overdue, by five years or more, would also be scheduled for a review of implementation of the provisions of the Convention. The Committee agreed that in the absence of an initial report, the Committee would consider as an initial report all information submitted by the State party to other organs of the United Nations or, in the absence of such material, reports and information prepared by organs of the United Nations.

567. At its fifty-third session, the Committee decided to schedule at its fifty-fourth session a review of the implementation of the provisions of the Convention in one State party, Bangladesh, whose periodic reports were seriously overdue. The review was postponed at the request of the State party, which indicated its intention to submit the requested reports in the near future.

568. At its fifty-third session, the Committee also decided to undertake at its fifty-fourth session a review of the implementation of the provisions of the Convention in the following States parties whose initial reports were seriously overdue: Bahrain, Congo, Slovenia. A report was subsequently submitted by Bahrain. In the case of Slovenia, the review was postponed at the request of the State party, which indicated its intention to submit the requested reports shortly. In the case of the Congo, the Committee proceeded with its review of the implementation of the provisions of the Convention.

569. At its fifty-fourth session, the Committee decided to schedule at its fifty-fifth session a review of the implementation of the provisions of the Convention in the following States parties whose periodic reports were seriously overdue: Central African Republic, Jamaica, Maldives, Mozambique, Senegal. In the case of Jamaica and Senegal, the review was postponed at the request of the respective States parties. In the case of the Central African Republic, Maldives and Mozambique, the Committee proceeded with its review of the implementation of the provisions of the Convention in the respective States parties.

570. At its fifty-fourth session, the Committee also decided to schedule at its fifty-fifth session a review of the implementation of the provisions of the Convention in one State party, Antigua and Barbuda, whose initial report was seriously overdue. At its fifty-fifth session, the Committee proceeded with a review of the implementation of the provisions of the Convention in Antigua and Barbuda.

Chapter VIII
Third Decade to Combat Racism and Racial Discrimination; World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

571. The Committee considered the question of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Third Decade to Combat Racism and Racial Discrimination at its fifty-fourth and fifty-fifth sessions (see CERD/C/SR.1330, 1335, 1350 and 1368-1369).

572. For the consideration of this item, the Committee had before it the following documents:

(a) General Assembly resolution 53/132 on the Third Decade to Combat Racism and the convening of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance;

(b) Commission on Human Rights resolution 1999/78 on racism, racial discrimination, xenophobia and related intolerance;

(c) Report of the Secretary-General on the implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination (A/53/305);

(d) Report of the United Nations High Commissioner for Human Rights submitted pursuant to Commission resolution 1998/26 (E/CN.4/1999/12);

(e) Report by Mr. Glélé-Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, submitted pursuant to Commission resolution 1998/26 (E/CN.4/1999/15 and Add.1);

(f) Report of the sessional open-ended working group to review and formulate proposals for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (E/CN.4/1999/16 and Corr.1 and 2).

573. In the Committee's discussion of the preparations for the upcoming World Conference against Racism, it was stressed that the Committee should continue to be actively involved. During the fifty-fourth session, a contact group, consisting of Mr. Garvalov, Ms. McDougall and Mr. Yutzis, which had been previously created to collect information on preparations for the World Conference and to make suggestions on the Committee's contribution thereto, was designated to represent the Committee at the Commission on Human Rights' sessional open-ended working group to review and formulate proposals for the preparations for the World Conference. At the 1335th meeting (fifty-fifth session), the chairperson of the contact group, Mr. Garvalov, gave a report on the activities of the sessional open-ended working group which included, *inter alia*, suggestions for further involvement by the Committee in the preparations for the World Conference. The Committee then discussed these suggestions as well as additional proposals made by other members for the Committee's continuing contribution to this process.

574. At its 1369th meeting (fifty-fifth session), on 26 August 1999, the Committee adopted the following decision.

Decision 5 (55) on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

The Committee on the Elimination of Racial Discrimination

1. *Recalls* its decision 9 (53) of 21 August 1998;

2. *Proposes* to the Preparatory Committee that it include in the agenda of the World Conference consideration of the problem of how the international community may prevent or mitigate mass and flagrant violations of the human rights of persons belonging to ethnic and racial groups and minorities, bearing in mind that in recent years the failure of the international community to urgently and adequately respond to numerous conflicts around the world has resulted in genocide, ethnic cleansing, the mass movement of refugees and displaced persons, and the disruption of regional peace and security by armed groups able to commit atrocities with impunity;

3. *Decides* that, to meet the needs of the Preparatory Committee and the World Conference, it will, with the assistance of the Office of the High Commissioner, prepare materials that, so far as possible, include:

(a) A reference document containing the Committee's decisions of substance, including those taken under the early warning and urgent procedures, as well as its latest concluding observations on each State party;

(b) Information about States parties which have amended their constitutions, legislation, judicial and administrative practices, or which have introduced special legislation with a view to implementing the Convention;

(c) A list of States parties which have made a declaration under article 14 of the Convention, recognizing the competence of the Committee to receive and consider communications from individuals and groups of individuals;

(d) A list of States parties which, upon ratification or accession to the International Convention on the Elimination of Racial Discrimination, have made reservations, and the text of such reservations;

4. *Decides* that, with the assistance of the Office of the High Commissioner, it will make an assessment of the best practices of States parties in combating racial discrimination, based on States parties' reports, the Committee's own practice and information received by the High Commissioner in response to the questionnaire transmitted to States Members of the United Nations pursuant to resolution 1999/78 adopted by the Commission on Human Rights on 28 April 1999. Such an assessment should be made available to the Preparatory Committee for its meeting in May 2000, and also to the World Conference itself;

5. *Welcomes* the studies prepared by individual members of the Committee for the Preparatory Committee and the World Conference itself, as listed in the annex to this resolution;[9]

6. *Suggests* that an eventual plan of action for the World Conference may deal with such issues as:

(a) Processes of racial reconciliation;

(b) Racial discrimination against indigenous populations;

(c) All human beings are born free and equal in dignity and rights;

(d) Racism, racial discrimination, xenophobia and related intolerance, challenge to peace, human rights, including the right to life, human dignity, stability and the rule of law;

(e) Incitement to racial hatred as a punishable offence;

(f) Effective measures to protect all persons against racial discrimination in both public and private sectors, and remedies and reparations for victims;

(g) Educational measures for all segments of the population in the spirit of the elimination of all forms of racial discrimination and intolerance;

(h) National commissions on human rights in the light of the Committee's General Recommendation XVII;

7. *Welcomes* the continued and constructive cooperation with the Subcommission on Prevention of Discrimination and Protection of Minorities, recalling the holding of two joint meetings in 1993 and 1995, joint meetings of the bureaux of the two organs, the preparation of a joint working paper on article 7 of the Convention (E/CN.4/Sub.2/1998/4), and the Subcommission's readiness to follow up on the suggestion by the Committee which resulted in preparing studies on the rights of non-citizens (E/CN.4/Sub.2/1997/7), on globalization in the context of the increase of racism, racial discrimination and xenophobia (E/CN.4/Sub.2/1999/8), and on the concept and practice of affirmative action;

8. *Decides* to establish and maintain contact, as appropriate, through the Office of the United Nations High Commissioner for Human Rights, with the regional mechanisms which shall be convened to make their contributions to the preparation of the World Conference.

1369th meeting
26 August 1999

Chapter IX
Overview of the methods of work of the Committee

575. An overview of the methods of work of the Committee appeared in its report to the General Assembly at its fifty-first session.[10] This summary highlights changes introduced in recent years and was designed to make the Committee's procedures more transparent and accessible to both States parties and the public. Since no material changes have occurred in the Committee's methods of work in the intervening time, the reader is invited to consult this part of its previous report to the General Assembly.

Notes

[1] *Official Records of the International Convention on the Elimination of All Forms of Racial Discrimination, Seventeenth Meeting of States Parties, Decisions* (CERD/SP/59/Add.1, CERD/SP/59/Corr.1 and CERD/SP/60).

[2] *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 18* (A/87/18), chap. IX, sect. B.

[3] Ibid., *Forty-eighth Session, Supplement No. 18* (A/48/18), annex III.

[4] Ibid., *Fifty-second Session, Supplement No. 18* (A/52/18), annex V, para. 4 (d).

[5] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 23* (A/53/23 (Part I)), paras. 67 and 75-76.

[6] For a report submitted in compliance with a special decision of the Committee taken at its forty-second session (1993), see CERD/C/247.

[7] For a report submitted in compliance with a special decision of the Committee taken at its fifty-third session (1998), see CERD/C/248.

[8] For a report submitted in compliance with a special decision of the Committee taken at its fifty-third session (1998), see CERD/C/364.

[9] The Committee joined as an annex to its decision 5 (55) the following documents prepared by some of its members which had been submitted to the sessional open-ended working group to review and formulate proposals for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (see E/CN.4/1999/16, para. 7):

> M. Banton: The causes of, and remedies for, racial discrimination (E/CN.4/1999/WG.1/BP.6) (English only);
>
> T. van Boven: United Nations strategies to combat racism and racial discrimination: past experiences and present perspectives (E/CN.4/1999/WG.1/BP.7) (English only);
>
> S. Sadiq Ali: Zimbabwe and South Africa: the lessons we can learn (E/CN.4/1999/WG.1/BP.8) (English only);
>
> A. Shahi, L. Valencia Rodriguez and I. Garvalov: Preventing genocide (E/CN.4/1999/WG.1/BP.9) (English only);
>
> I. Diaconu: The definitions of racial discrimination (E/CN.4/1999/WG.1/BP.10) (English only);
>
> R. de Gouttes: De l'utilité de l'application complémentaire des procédures de plaintes individuelles devant les organes universels et régionaux de protection des droits de l'homme: l'exemple des plaintes de la discrimination raciale et devant la Cour européenne des droits de l'homme (E/CN.4/1999/WG.1/BP.11) (French only).

The annex also referred to a document prepared by two members of the Committee and two members of the Subcommission on Prevention of Discrimination and Protection of Minorities: J. Bengoa, I. Garvalov, M. Mehedi and S. Sadiq Ali: Joint working paper on article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination (E/CN.4/Sub.2/1998/4); and two unofficial documents: G. McDougall: Commentary and background information on proposed General Recommendation on gender dimensions of racial discrimination (CERD/C/54/Misc.31); I. Diaconu and Y. Rechetov: Reservations to the International Convention on the Elimination of All Forms of Racial Discrimination: the role of the Committee on the Elimination of Racial Discrimination (CERD/C/53/Misc.23).

[10] *Official Records of the General Assembly, Fifty-first Session, Supplement No. 18* (A/51/18), paras. 587-627.

Annex I

Status of the Convention

A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination (155), as at 27 August 1999

State party	*Date of receipt of the instrument of ratification or accession*	*Entry into force*
Afghanistan	6 July 1983[a]	5 August 1983
Albania	11 May 1994[a]	10 June 1994
Algeria	14 February 1972	15 March 1972
Antigua and Barbuda	25 October 1988[a]	24 November 1988
Argentina	2 October 1968	4 January 1969
Armenia	23 June 1993[a]	23 July 1993
Australia	30 September 1975	30 October 1975
Austria	9 May 1972	8 June 1972
Azerbaijan	16 August 1996[a]	15 September 1996
Bahamas	5 August 1975[b]	4 September 1975
Bahrain	27 March 1990[a]	26 April 1990
Bangladesh	11 June 1979[a]	11 July 1979
Barbados	8 November 1972[a]	8 December 1972
Belarus	8 April 1969	8 May 1969
Belgium	7 August 1975	6 September 1975
Bolivia	22 September 1970	22 October 1970
Bosnia and Herzegovina	16 July 1993[b]	16 July 1993
Botswana	20 February 1974[a]	22 March 1974
Brazil	27 March 1968	4 January 1969
Bulgaria	8 August 1966	4 January 1969
Burkina Faso	18 July 1974[a]	17 August 1974
Burundi	27 October 1977	26 November 1977
Cambodia	28 November 1983	28 December 1983
Cameroon	24 June 1971	24 July 1971
Canada	14 October 1970	13 November 1970
Cape Verde	3 October 1979[a]	2 November 1979
Central African Republic	16 March 1971	15 April 1971
Chad	17 August 1977[a]	16 September 1977
Chile	20 October 1971	19 November 1971
China	29 December 1981[a]	28 January 1982
Colombia	2 September 1981	2 October 1981
Congo	11 July 1988[a]	10 August 1988
Costa Rica	16 January 1967	4 January 1969
Côte d'Ivoire	4 January 1973[a]	3 February 1973
Croatia	12 October 1992[b]	8 October 1991
Cuba	15 February 1972	16 March 1972

State party	*Date of receipt of the instrument of ratification or accession*	*Entry into force*
Cyprus	21 April 1967	4 January 1969
Czech Republic	22 February 1993[b]	1 January 1993
Democratic Republic of the Congo	21 April 1976[a]	21 May 1976
Denmark	9 December 1971	8 January 1972
Dominican Republic	25 May 1983[a]	24 June 1983
Ecuador	22 September 1966[a]	4 January 1969
Egypt	1 May 1967	4 January 1969
El Salvador	30 November 1979[a]	30 December 1979
Estonia	21 October 1991[a]	20 November 1991
Ethiopia	23 June 1976[a]	23 July 1976
Fiji	11 January 1973[b]	10 February 1973
Finland	14 July 1970	13 August 1970
France	28 July 1971[a]	27 August 1971
Gabon	29 February 1980	30 March 1980
Gambia	29 December 1978[a]	28 January 1979
Georgia	2 June 1999[a]	2 July 1999
Germany	16 May 1969	15 June 1969
Ghana	8 September 1966	4 January 1969
Greece	18 June 1970	18 July 1970
Guatemala	18 January 1983	17 February 1983
Guinea	14 March 1977	13 April 1977
Guyana	15 February 1977	17 March 1977
Haiti	19 December 1972	18 January 1973
Holy See	1 May 1969	31 May 1969
Hungary	1 May 1967	4 January 1969
Iceland	13 March 1967	4 January 1969
India	3 December 1968	4 January 1969
Indonesia	25 June 1999[a]	25 July 1999
Iran (Islamic Republic of)	29 August 1968	4 January 1969
Iraq	14 January 1970	13 February 1970
Israel	3 January 1979	2 February 1979
Italy	5 January 1976	4 February 1976
Jamaica	4 June 1971	4 July 1971
Japan	15 December 1995	14 January 1996
Jordan	30 May 1974[a]	29 June 1974
Kazakhstan	26 August 1998[a]	25 September 1998
Kuwait	15 October 1968[a]	4 January 1969
Kyrgyzstan	5 September 1997	5 October 1997
Lao People's Democratic Republic	22 February 1974[a]	24 March 1974
Latvia	14 April 1992[a]	14 May 1992
Lebanon	12 November 1971[a]	12 December 1971
Lesotho	4 November 1971[a]	4 December 1971

State party	*Date of receipt of the instrument of ratification or accession*	*Entry into force*
Liberia	5 November 1976[a]	5 December 1976
Libyan Arab Jamahiriya	3 July 1968[a]	4 January 1969
Lithuania	10 December 1998	9 January 1999
Luxembourg	1 May 1978	31 May 1978
Madagascar	7 February 1969	9 March 1969
Malawi	11 June 1996[a]	11 July 1996
Maldives	24 April 1984[a]	24 May 1984
Mali	16 July 1974[a]	15 August 1974
Malta	27 May 1971	26 June 1971
Mauritania	13 December 1988	12 January 1989
Mauritius	30 May 1972[a]	29 June 1972
Mexico	20 February 1975	22 March 1975
Monaco	27 September 1995	27 October 1995
Mongolia	6 August 1969	5 September 1969
Morocco	18 December 1970	17 January 1971
Mozambique	18 April 1983[a]	18 May 1983
Namibia	11 November 1982[a]	11 December 1982
Nepal	30 January 1971[a]	1 March 1971
Netherlands	10 December 1971	9 January 1972
New Zealand	22 November 1972	22 December 1972
Nicaragua	15 February 1978[a]	17 March 1978
Niger	27 April 1967	4 January 1969
Nigeria	16 October 1967[a]	4 January 1969
Norway	6 August 1970	5 September 1970
Pakistan	21 September 1966	4 January 1969
Panama	16 August 1967	4 January 1969
Papua New Guinea	27 January 1982[a]	26 February 1982
Peru	29 September 1971	29 October 1971
Philippines	15 September 1967	4 January 1969
Poland	5 December 1968	4 January 1969
Portugal	24 August 1982[a]	23 September 1982
Qatar	22 July 1976[a]	21 August 1976
Republic of Korea	5 December 1978[a]	4 January 1979
Republic of Moldova	26 January 1993[a]	25 February 1993
Romania	15 September 1970[a]	15 October 1970
Russian Federation	4 February 1969	6 March 1969
Rwanda	16 April 1975[a]	16 May 1975
Saint Lucia	14 February 1990[b]	16 March 1990
Saint Vincent and the Grenadines	9 November 1981[a]	9 December 1981
Saudi Arabia	22 September 1997	22 October 1997
Senegal	19 April 1972	19 May 1972
Seychelles	7 March 1978[a]	6 April 1978

State party	*Date of receipt of the instrument of ratification or accession*	*Entry into force*
Sierra Leone	2 August 1967	4 January 1969
Slovakia	28 May 1993[b]	28 May 1993
Slovenia	6 July 1992[b]	6 July 1992
Solomon Islands	17 March 1982[b]	16 April 1982
Somalia	26 August 1975	25 September 1975
South Africa	10 December 1998	9 January 1999
Spain	13 September 1968[a]	4 January 1969
Sri Lanka	18 February 1982[a]	20 March 1982
Sudan	21 March 1977[a]	20 April 1977
Suriname	15 March 1984[b]	14 April 1984
Swaziland	7 April 1969[a]	7 May 1969
Sweden	6 December 1971	5 January 1972
Switzerland	29 November 1994[a]	29 December 1994
Syrian Arab Republic	21 April 1969[a]	21 May 1969
Tajikistan	11 January 1995[a]	10 February 1995
The former Yugoslav Republic of Macedonia	18 January 1994[b]	17 September 1991
Togo	1 September 1972[a]	1 October 1972
Tonga	16 February 1972[a]	17 March 1972
Trinidad and Tobago	4 October 1973	3 November 1973
Tunisia	13 January 1967	4 January 1969
Turkmenistan	29 September 1994[a]	29 October 1994
Uganda	21 November 1980[a]	21 December 1980
Ukraine	7 March 1969	6 April 1969
United Arab Emirates	20 June 1974[a]	20 July 1974
United Kingdom of Great Britain and Northern Ireland	7 March 1969	6 April 1969
United Republic of Tanzania	27 October 1972[a]	26 November 1972
United States of America	21 October 1994	20 November 1994
Uruguay	30 August 1968	4 January 1969
Uzbekistan	28 September 1995[a]	28 October 1995
Venezuela	10 October 1967	4 January 1969
Viet Nam	9 June 1982[a]	9 July 1982
Yemen	18 October 1972[a]	17 November 1972
Yugoslavia	2 October 1967	4 January 1969
Zambia	4 February 1972	5 March 1972
Zimbabwe	13 May 1991[a]	12 June 1991

[*] The following States have signed but not ratified the Convention: Benin, Bhutan, Grenada, Ireland, Turkey.

[a] Accession.

[b] Date of receipt of notification of succession.

B. States parties that have made the declaration under article 14, paragraph 1, of the Convention (28), as at 27 August 1999

State party	*Date of deposit of the declaration*	*Effective date*
Algeria	12 September 1989	12 September 1989
Australia	28 January 1993	28 January 1993
Bulgaria	12 May 1993	12 May 1993
Chile	18 May 1994	18 May 1994
Costa Rica	8 January 1974	8 January 1974
Cyprus	30 December 1993	30 December 1993
Denmark	11 October 1985	11 October 1985
Ecuador	18 March 1977	18 March 1977
Finland	16 November 1994	16 November 1994
France	16 August 1982	16 August 1982
Hungary	13 September 1990	13 September 1990
Iceland	10 August 1981	10 August 1981
Italy	5 May 1978	5 May 1978
Luxembourg	22 July 1996	22 July 1996
Malta	16 December 1998	16 December 1998
Netherlands	10 December 1971	9 January 1972
Norway	23 January 1976	23 January 1976
Peru	27 November 1984	27 November 1984
Poland	1 December 1998	1 December 1998
Republic of Korea	5 March 1997	5 March 1997
Russian Federation	1 October 1991	1 October 1991
Senegal	3 December 1982	3 December 1982
Slovakia	17 March 1995	17 March 1995
South Africa	9 January 1999	9 January 1999
Spain	13 January 1998	13 January 1998
Sweden	6 December 1971	5 January 1972
Ukraine	28 July 1992	28 July 1992
Uruguay	11 September 1972	11 September 1972

C. States parties that have accepted the amendments to the Convention adopted at the fourteenth meeting of States parties* (24), as at 27 August 1999

State party	*Date acceptance received*
Australia	15 October 1993
Bahamas	31 March 1994
Bulgaria	2 March 1995
Burkina Faso	9 August 1993
Canada	8 February 1995
Cuba	21 November 1996
Cyprus	29 July 1977
Denmark	3 September 1993
Finland	9 February 1994
France	1 September 1994
Germany	15 January 1996
Mexico	16 September 1996
Netherlands (for the Kingdom in Europe and the Netherlands Antilles and Aruba)	24 January 1995
New Zealand	8 October 1993
Norway	6 October 1993
Republic of Korea	30 November 1993
Seychelles	23 July 1993
Sweden	14 May 1993
Switzerland	16 December 1996
Syrian Arab Republic	25 February 1998
Trinidad and Tobago	23 August 1993
Ukraine	17 June 1994
United Kingdom of Great Britain and Northern Ireland	7 February 1994
Zimbabwe	10 April 1997

* For the amendments to enter into force, acceptance must be received from two thirds of the States parties to the Convention.

Annex II

Agendas of the fifty-fourth and fifty-fifth sessions

A. Fifty-fourth session

1. Adoption of the agenda.
2. Organizational and other matters.
3. Prevention of racial discrimination, including early warning and urgent action procedures.
4. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention.
5. Submission of reports by States parties under article 9, paragraph 1, of the Convention.
6. Action by the General Assembly at its fifty-third session:
    (a) Annual report submitted by the Committee on the Elimination of Racial Discrimination under article 9, paragraph 2, of the Convention;
    (b) Effective implementation of international instruments on human rights.
7. Consideration of communications under article 14 of the Convention.
8. Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention.
9. Third Decade to Combat Racism and Racial Discrimination; World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

B. Fifty-fifth session

1. Adoption of the agenda.
2. Organizational and other matters.
3. Prevention of racial discrimination, including early warning measures and urgent action procedures.
4. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention.
5. Submission of reports by States parties under article 9, paragraph 1, of the Convention.
6. Action by the General Assembly at its fifty-third session:
    (a) Annual report submitted by the Committee on the Elimination of Racial Discrimination under article 9, paragraph 2, of the Convention;
    (b) Effective implementation of international instruments on human rights.
7. Consideration of communications under article 14 of the Convention.
8. Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention.

9. Third Decade to Combat Racism and Racial Discrimination; World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

10. Report of the Committee to the General Assembly at its fifty-fourth session under article 9, paragraph 2, of the Convention.

Annex III

Decisions of the Committee on the Elimination of Racial Discrimination under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination

A. Fifty-fourth session

Decision concerning communication No. 8/1996

Submitted by:	B. M. S. [represented by counsel]
Alleged victim:	The author
State party concerned:	Australia
Date of communication:	19 July 1996 (initial submission)

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 12 March 1999,

Having concluded its consideration of communication No. 8/1996, submitted to the Committee under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into consideration all written information made available to it by the author and the State party,

Bearing in mind rule 95 of its rules of procedure requiring it to formulate its opinion on the communication before it,

Adopts the following:

Opinion

1. The author of the communication is B. M. S., an Australian citizen since 1992 of Indian origin and a medical doctor. He claims to be a victim of violations of the Convention by Australia. He is represented by counsel.

The facts as submitted by the author

2.1 The author graduated from Osmania University (India). He holds a diploma in clinical neurology from the University of London. He has practised medicine in England, India, Ireland and the United States. For 10 years he has worked as a medical practitioner under temporary registration in Australian public hospitals.

2.2 The author states that doctors trained overseas who have sought medical registration in Australia have to undergo and pass an examination involving two stages, a multiple choice examination and a clinical examination. The whole process is conducted by the Australian Medical Council (AMC), a non-governmental organization partly funded by the Government.

2.3 In 1992, the Australian Minister of Health imposed a quota on the number of doctors trained overseas who pass the first stage of this examination. As a result, doctors who were trained abroad and who are Australian residents and Australian citizens may not be registered precisely because they fall outside the quota. On the other hand, quota places may be allocated to persons without any immigration status in Australia.

2.4 Following the imposition of the quota system the author sat the multiple choice examination on three occasions. He satisfied the minimum requirements but was always prevented, by the quota system, from proceeding to the clinical examination.

2.5 In March 1993, the author filed a formal discrimination complaint with the Australian Human Rights and Equal Opportunity Commission (HREOC) against the quota and the examination system. In August 1995, the Commission found the quota policy unlawful under the Australian Racial Discrimination Act, considering it "grossly unfair, resulting in unnecessary trauma, frustration and a deep sense of injustice". As regards the examination system, the Commission held that the decision to require the author to sit for and pass examinations was not based on his national origin or on the consideration that he was a person not of Australian or New Zealand origin.

2.6 The Australian Government and the AMC appealed the decision of the HREOC. On 17 July 1996, the Federal Court of Australia ruled in their favour, finding that the quota and the examination system were reasonable.

2.7 The author did not appeal this decision to the High Court of Australia. According to counsel the appeal to the High Court is not an effective remedy within the meaning of article 14, paragraph 7 (a), of the Convention. On the one hand, there is no automatic right of appeal to the High Court, since the Court must first grant special leave to appeal. On the other hand, the High Court has consistently stated that a prima facie case of error will not of itself warrant the granting of an application for leave to appeal. There must be some special feature which warrants the attention of the Court, with its public role in developing and clarifying the law and in maintaining procedural regularity in the lower courts, outweighing the private rights of litigants.

2.8 Furthermore, the author did not have the means to pursue the appeal without being awarded legal aid, and a cost order would be imposed on him if the appeal was unsuccessful. In fact, on 28 October 1996 Legal Aid advised that it would not fund the author's appeal to the High Court.

2.9 In subsequent submissions counsel indicates that following HREOC's decision and notwithstanding that an appeal had been lodged, the AMC decided to abandon the quota. As a result all overseas trained doctors who, like the author, have met the minimum requirements of the multiple choice examination but have been prevented from doing so by the quota, are now allowed to undertake the clinical examination. The author has attempted the clinical examination on several occasions. The examination has three components and it is necessary to pass all the components at the one sitting. The author has passed each component at least once but not all three at the same sitting.

2.10 The standard of the AMC examination is supposedly that of an Australian-trained medical student who is about to commence an intern year. Counsel states that it is objectively preposterous that a person of the author's experience, with 13 years working as a doctor and 8 years in the Australian health system, is not at least of the standard of a newly graduated medical student.

2.11 Studies on Australian medical graduates show serious deficiencies in clinical skills. For example, a University of Queensland study published in 1995 indicates that at the commencement of the intern year, medical staff did not consider all graduates competent even in history-taking and clinical examination skills and most graduates were not considered competent in such areas as diagnosis, interpreting investigations, treatment procedures and emergency procedures. At the conclusion of the intern year, only 45 per cent of medical staff considered all interns competent at history-taking and only 36 per cent of medical staff considered all interns competent at physical examination. In view of such studies, it is clear that overseas-trained doctors are examined at a higher standard than Australian graduates. In the author's case, the fact that the AMC persistently fails him raises the additional question of whether he is being penalized for taking his case to the HREOC.

The complaint

3.1 Counsel claims that both the AMC examination system for overseas doctors as a whole and the quota itself are unlawful and constitute racial discrimination. In this respect the judgement of the Federal Court of Australia condones the discriminatory acts of the Australian Government and the AMC and thereby reduces the protection accorded to Australians under the Racial Discrimination Act. At the same time, it eliminates any chance of reform of this discriminatory legislation.

3.2 Counsel contends that the restrictions to practise their profession imposed on overseas-trained doctors before they can be registered aim at limiting the number of doctors to preserve the more lucrative areas of medical practice for domestically trained doctors.

State party's preliminary submission and author's comments thereon

4.1 In a submission dated 7 January 1997 the State party informs the Committee that in October 1995 the AMC decided to discontinue the quota system following the HREOC's conclusion that the system was racially discriminatory. That decision was taken in spite of the Federal Court's ruling that the quota system was reasonable and not racially discriminatory. As a result, the 281 candidates who had fallen outside the quota, including the author, were informed that they were eligible to undertake the clinical examinations.

4.2 The State party notes that the author has sat the AMC clinical examination and failed it three times. As a result of the HREOC's decision in the author's case an independent observer appointed by the author was present during his first two attempts. Under the current AMC regulations, he may resit the clinical examination in the next two years, without having to resit the multiple choice examination. Currently, there is no restriction, other than satisfactory performance, on the author's progress through the AMC examinations.

4.3 With respect to counsel's allegation that the Federal Court ordered the author to pay the legal costs of the AMC, the State party informs the Committee that in November 1996 the AMC agreed to discontinue pursuit of costs against the author. The Federal Court had made no order for costs in respect of the Commonwealth of Australia, which agreed to bear its own costs.

4.4 In the light of the above the State party considers the author's complaint to be moot.

5.1 In his comments, counsel informs the Committee that the author does not wish to withdraw his communication. He notes that although the quota system was discontinued it may be reintroduced at any time in the light of the Federal Court's ruling which overturned the HREOC's decision. According to counsel the State party authorities have indeed contemplated the possibility of reintroducing it.

5.2 Counsel reiterates that the discontinuation of the quota has not solved the problem of discrimination, since the AMC has simply increased the pass criteria to compensate for the absence of the restrictive effects of the quota. He further claims that although the author has been allowed to proceed to the clinical examination he was failed on each occasion, in circumstances which suggest that he is being penalized for having originally complained to the HREOC. He has lodged a further complaint with the Commission about this issue.

5.3 Furthermore, the fact that a discriminatory practice has been discontinued does not change its previous discriminatory nature or render void complaints concerning its application and operation when it was still in force. Consequently, it is argued that the author's rights were violated from 1992 to 1995, causing him a detriment which has not been redressed by the discontinuation of the quota system.

The Committee's admissibility decision and State party's comments thereon

6.1 During its fifty-first session the Committee examined the communication and noted that the main issues before it were: (a) whether the State party had failed to meet its obligation under article 5 (e) (i) to guarantee the author's right to work and free choice of employment; and (b) whether the order of costs against the author by the Federal Court violated the author's rights under article 5 (a) to equal treatment before the courts.

6.2 On 19 August 1997 the Committee adopted a decision by which it considered the communication admissible with respect to the claim relating to the discriminatory nature of both the AMC examination and its quota system. The Committee noted, *inter alia*, that the Federal Court's decision provided a legal basis for the reintroduction of the quota system at any time. The Committee did not share the State party's reasoning that since the quota system had been discontinued, the author's complaint for the discrimination alleged to have taken place between 1992 and 1995 had become moot. In respect of the fact that the author did not appeal the Federal Court's decision to the High Court of Australia, the Committee considered that even if this possibility were still open to the author, and taking into account the length of the appeal process, the circumstances of the case justified the conclusion that the application of domestic remedies had been unreasonably prolonged.

6.3 The Committee declared the case inadmissible as to the author's complaint that he was discriminated against because the pass criteria had been raised, since that matter had been submitted to the HREOC and therefore domestic remedies had not been exhausted. It also considered the case inadmissible as to the author's claim that costs ordered by the Court against him constituted discrimination, in view of the State party's information that the AMC would not be pursuing further the costs imposed by the Court.

6.4 By letter dated 24 December 1997 the State party informed the Committee that its submission of 17 January 1997 contained a request for advice on whether the communication was ongoing. This request was made because the alleged victim had effectively received a remedy as a result of the Government's decision to lift the quota. This request did not constitute the State party's pleadings on admissibility and was not submitted under rule 92 of the Committee's rules of procedure. The submission clearly indicated that if the Committee decided to proceed with its consideration of the author's complaint the State party would like to be given the opportunity to make submissions on the admissibility and merits of the communication. The State party also indicated that it had never been advised that the author had declined to withdraw his complaint.

6.5 By letter dated 11 March 1998 the Committee informed the State party that rule 94, paragraph 6, of the Committee's rules of procedure provides for the possibility of reviewing an admissibility decision when the merits of a communication are examined. Accordingly, the Committee would revisit its earlier decision on admissibility upon receipt of relevant information from the State party.

State party's observations on admissibility and the merits

7.1 The State party submits that the author's interpretation of the requirement imposed on overseas-trained doctors such as himself to sit written and clinical examinations to demonstrate competence is incorrect. The author is not subject to the system of examinations because of his (Indian) national origin, but because he has trained at an overseas institution. All overseas-trained doctors, regardless of national origin, are required to sit the examinations. The objective of the examination process is to establish that medical practitioners trained in medical institutions not accredited formally by the AMC have the necessary medical knowledge and clinical competence for the practice of medicine with safety within the Australian community. Its standard is the level of attainment of medical knowledge and clinical skills corresponding to that required of newly qualified graduates of Australian medical schools who are about to commence intern training. The author has sat the multiple choice examinations on a total of six occasions. His first three attempts predated the introduction of the quota in 1992. On each occasion, he failed to reach the "pass mark". After the introduction of the quota in 1992, the author sat the multiple choice examination a further three times. Whilst succeeding in obtaining a "pass", he did not come within the top 200 candidates passing the multiple choice examination and so was unable to proceed to the clinical examination. When the quota was discontinued, the author was permitted to sit for the clinical examination in March 1996, August 1996, October 1996 and March 1997. On each occasion he failed to demonstrate sufficient proficiency in each of the subject areas to be granted registration. He currently is on the waiting list to sit the clinical examination again.

7.2 The State party submits that the scheme, in general and in its application to the author, does not represent a breach of Australia's obligations under article 5 (e) (i). The underlying basis of the author's complaint is that overseas-trained doctors, particularly those who have "proven competence" through practice in Australian public hospitals, should be similarly placed to doctors trained in AMC-accredited schools. In the view of the Australian Government, however, graduates of overseas universities and those from Australian and New Zealand universities cannot be accepted as having equal medical competence without further investigation. Educational standards vary across the globe and the Australian Government is justified in taking account of this difference in devising schemes to test the comparability of standards. To accept the author's complaint would be to engage in a circular argument which prejudges the question of equivalence of standards, a matter which the Australian Government is entitled to question. The scheme in fact ensures equality of treatment.

7.3 Furthermore, the State party does not accept that working in Australian hospitals under temporary registration is necessarily sufficient proof of competence to justify the waiving of examination requirements. When working under temporary registration, overseas-trained doctors are subject to strict supervision and practice requirements and may not be exposed to the broad range of medical conditions which exist in the Australian community. Satisfactory performance under such restricted conditions does not equate with sufficient knowledge and competence over the range of areas of permitted practice under general registration.

7.4 The requirement that overseas-trained doctors sit for and pass AMC examinations is not based on national origin. The distinction made is on the basis of the identity of the medical school, regardless of the national origin (or any other personal characteristic) of the candidate seeking registration. In practice, no matter the race or national origin of a candidate, that candidate must fulfil the same requirements: either graduation from an accredited medical school or the completion of AMC exams to demonstrate an equal level of competence to those who have successfully graduated from an accredited medical school. Thus, for instance, if a person of Indian national origin studied overseas, he/she would have to sit the AMC exams. If he/she studied in Australia, he/she would be entitled to proceed straight to an internship. Similarly, whether a person is of English national origin, Australian national origin, Indian national origin or any other national origin, the requirements remain constant.

7.5 Furthermore, despite the author's implication that the AMC has deliberately chosen not to accredit overseas medical schools for reasons associated with racial discrimination, there is no evidence to suggest that the system was intended to, or in fact works to, the detriment of persons of a particular race or national origin. Contrary to the author's complaint, the system of AMC examinations does not carry any imputation regarding the attributes of individuals of particular national origins. In particular, the need to sit for such examinations does not imply that doctors trained overseas, whether or not they have been practising in Australia, are inferior because of their race, national or ethnic origin. Instead, it simply sends the message that all graduates of medical schools will be subject to the same standard of examination before being permitted to work unconditionally in Australia.

7.6 The HREOC was satisfied that the accreditation system was not based on race. The AMC's evidence, which the HREOC accepted, was that accreditation was undertaken on the basis of efficient use of resources. The AMC has considered it impractical to investigate for the accreditation process every university attended by applicants for registration. Given the wide range of countries from which immigrants to Australia come, there is concomitantly an extremely large number of universities all around the world from which overseas-trained doctors have graduated. The AMC does not have the resources to undertake such an extensive accreditation, nor should it be expected to. The Australian Government supports the reasonableness of the allocation of the AMC's resources to accredit schools with which it has most familiarity and contact. It thus considers an examination to be an equitable system of adjudging standards of competence by persons, regardless of race or national origin. The accreditation of New Zealand medical schools, in particular, is explainable in terms of the mutual accreditation programme carried out by the Australian Medical Council and the Medical Council of New Zealand.

7.7 The State party does not accept the author's allegation that the system privileges Australian and New Zealand doctors and disadvantages doctors trained outside Australia and New Zealand. Even if (for the purposes of argument) such a benefit or disadvantage could be established, such an effect would not constitute discrimination on the basis of "national origin" or any other prescribed ground under the Convention. The group who are privileged under this scenario are those trained in Australian and New Zealand medical schools, rather than persons of particular national origin. Medical students in Australia do not share a single national origin. Similarly, those who are overseas-trained doctors are not of a single national origin. Whilst the latter group are likely "not to be of Australian national origin", the Australian Government does not accept that such a broad category of persons represents a "national origin" or racial classification for the purposes of article 5 (e) (i). For the purposes of article 5 (e) (i), it would be necessary to demonstrate discrimination on the basis of a person's particular national origin — in this case, the author's Indian national origin.

7.8 The current system of examinations is clearly based on objective and reasonable criteria. It is a legitimate policy objective for the Australian Government to seek to maintain high standards of medical care for its residents and to seek to assure itself of the standards of medical competence of those seeking to work in Australia on an unsupervised basis. Thus, it is reasonable for legislatures to institute a means of supplementary exams for those trained in universities with which it is not familiar to ensure that their competence is at a comparable level to those trained within Australia and New Zealand. That the author would prefer an alternative method of evaluating competence does not detract from the reasonableness of the current system. It is within a State's discretion to take the view which has been adopted — that an examination is the best method to test for overall knowledge. The reasonableness of such a system is also demonstrated by the extent to which similar practices are adopted by other States parties to the Convention, such as the United Kingdom, Canada, the United States and New Zealand.

7.9 The need for doctors to demonstrate their competence could also be regarded as outside the realm of "discrimination" by reason of it being an inherent occupational requirement. Although the Convention does not explicitly mention such an exception, it would seem in keeping with the spirit of the Convention for the Committee to recognize that measures based on the inherent requirements of jobs do not represent discrimination, in a similar way to the recognition of the principle in article 1 (2) of the ILO Convention (No. 111) concerning Discrimination in respect of Employment and Occupation.

7.10 The State party submits that there has been no relevant impairment of the right to work or free choice of employment through the current scheme. The institution of regulatory schemes governing the prerequisites for admission to practise in a particular profession and applying equally to all does not infringe or impair an individual's right to work. Implicit in the author's complaint is that he should have the right to work as a doctor and the right to have his qualifications recognized by the health authorities in Australia without undergoing any form of external examination. In the Australian Government's view, such an argument misunderstands the nature of the internationally recognized right to work.

7.11 Under international law, the right to work does not confer a right to work in the position of one's choice. Instead, by recognizing the right to work, States parties undertake not to inhibit employment opportunities and to work towards the implementation of policies and measures aimed at ensuring there is work for those seeking it. In the current context the Australian Government is not impairing anyone's right to work. In fact, the relevant legislative schemes merely regulate the means of practising a particular profession.

7.12 The system of admission to unrestricted practice does not impair the right of anyone to free choice of employment, let alone persons of a particular national origin. Recognition of a right to free choice of employment is designed to prevent forced labour, not to guarantee an individual the right to the particular job he/she desires. In the present context, there is no servitude or forced labour regime which impairs the choice of employment of doctors of a particular national origin. Instead, there is a system of examinations which permits entry into unrestricted practice.

7.13 Similarly, whilst counsel has attempted to argue that the author is equally placed to Australian doctors in terms of competence and that his experience should be a sufficient demonstration of competence, the State party submits that there is no evidence that doctors of Indian national origin should be treated differently to overseas-trained doctors of other national origins. Nor is there compelling evidence to suggest that the subjection of the author to the AMC examinations is unreasonable and evidence of racial discrimination. Despite counsel's reliance on the author's practice in public hospitals, the State party notes that at all relevant times, the author's practice has been circumscribed by strict supervision and limited practice requirements commensurate with his status as a conditional registrant. The State party would thus reject any implication that his work in Australia demonstrates sufficient competence to warrant automatic general registration.

7.14 The State party denies that the standard of the AMC examinations is higher than that expected of students at Australian and New Zealand medical schools. Steps have been taken to ensure the comparability of the examination system, including: (a) the appointment of a Board of Examiners with broad experience in teaching and examining undergraduates, and therefore familiar with the curricula of Australian university medical schools; (b) the use of a bank of approximately 3,000 multiple choice questions mostly drawn from multiple choice examination papers of the medical schools of Australian universities and questions specifically commissioned by the AMC from Australian medical schools; (c) the multiple choice examination papers are marked by Educational Testing Centre at the University of New South Wales, a major national testing authority which also provides information in relation to the statistical reliability and validity of the questions. If data indicate that a particular question fails as a discriminator of performance, or if there is evidence to suggest that a question could be misleading, the Board of Examiners is able to delete that question from the examination; (d) instructing both the multiple choice and clinical examiners to the effect that the examinations should be directed to establishing whether AMC candidates have the same level of medical knowledge and medical skills as new graduates.

7.15 The past practice of adjustment of raw scores in the multiple choice examination does not reflect any racial discrimination, or a racially discriminatory quota. Such adjustment was designed as a method of standardization to prevent unrepresentative results based on the particular examination.

7.16 Other than his particular complaints about his failure to pass the examinations, the author has not advanced any objective evidence to support the non-comparability of the examination standards. The only study produced by the author's counsel merely comments on perceptions of deficiencies in the standard of first year interns, rather than the comparability of the forms of examination to which overseas-trained doctors and AMC-accredited medical students are subject.

7.17 Quite apart from the nature of the examinations in themselves, the author has failed to make a case that any disparity in standards of the multiple choice examinations and standards at AMC-accredited universities has the purpose or effect of discriminating against persons of a particular national origin. When the figures of national origin and success rates in the multiple choice examinations are compared, there is no evidence of discrimination against persons of a particular national origin. In particular, there is no evidence that persons of Indian national origin are less likely than persons of other national origin to pass the examination. The State party provides a table of results in the 1994 exams (the last year in which the quota applied), showing that Indian students' success rates in the AMC exams are proportionate to their entry levels in the examinations. Whilst Indian doctors comprised 16.48 per cent of doctors attempting the multiple choice examination in 1994, they represented 16.83 per cent of those successfully passing the multiple choice examination.

7.18 The author alleges that during the period of the operation of the quota system between July 1992 and October 1995, the exclusion of overseas-trained doctors such as himself from the AMC clinical examination on the basis of his quota ranking constituted racial discrimination and was a denial of his right to equal enjoyment of the right to work and free choice of employment under article 5 (e) (i).

7.19 When the Australian Health Ministers' Conference resolved to introduce the quota on overseas-trained doctors in early 1992, the overseas-trained doctors in the process of undergoing the AMC examinations numbered approximately 4,500, almost four times the number of doctors expected to graduate from Australian medical schools. In the face of such a large number of overseas-trained doctors seeking to practise in Australia and mindful of the national workforce supply target (set at one doctor per 500 persons), the Conference adopted a National Medical Workforce Strategy comprising a number of initiatives. One of them was the introduction of a quota on the numbers of overseas-trained doctors who would be allowed to sit the clinical examination, having passed the multiple choice examination. Thus, the Conference requested the AMC to set a cap of 200 on the number of candidates proceeding annually to the clinical examinations. The request was made on the basis of (a) the number of doctors needed to service the Australian community to requisite standards; (b) the cost of the provision of medical services under an open-ended funding commitment and the impact on that cost of a more than optimum number of doctors; (c) the geographic distribution of doctors; and (d) the degree to which the supply of doctors is sufficient to meet the needs of particular community groups and particular specialities.

7.20 The quota was not racially discriminatory in any form. Firstly, it applied to all overseas-trained doctors regardless of national origin, with persons of a variety of national origins, including Australians, being subject to the requirement. Nor is there any evidence that the quota disproportionately affected persons of Indian national origin. In evidence before the Federal Court, for example, the proportion of doctors of Indian birth gaining entry to the quota was in fact marginally higher than the percentage of doctors of Indian birth attempting the multiple choice examination. Furthermore, the quota on doctors trained overseas was complemented by the pre-existing de facto quota on students seeking entry to Australian medical schools.

7.21 Secondly, even if the quota could be considered to have benefited those who have attended Australian and New Zealand medical schools, such persons are not characterized by a national origin. Instead, they would be likely to share citizenship, a factor outside the realm of the Convention.

7.22 Thirdly, even if (for the purposes of argument) the Committee was of the view that the quota represented a distinction on the basis of national origin, the State party would submit that the quota was a reasonable measure, proportionate to meeting the State's legitimate interest in controlling the number of health care providers and hence was not an arbitrary distinction. Such a purpose is not inconsistent with the Convention and would only infringe the Convention if such policies, designed to deal with the supply of medical professionals, disguised racial discrimination. Whilst the details of the quota were subject to some criticism by the HREOC (in that it did not provide for a waiting list, but required overseas-trained doctors not initially successful in coming within the annual quota to undergo the examination again), such a factor does not make the quota unreasonable or discriminatory.

7.23 As the State party has previously noted, the quota is no longer in existence and the author has been permitted to sit for the clinical examination on several occasions. He has thus been afforded a remedy, if any was required. The State party's view remains that the subject matter is moot.

7.24 The State party further considers that the author's complaint concerning the application of the quota to all overseas-trained doctors regardless of citizenship status does not fall within the terms of the Convention. Under article 1 (2) of the Convention States parties are not prohibited from discriminating on the basis of citizenship. Conversely, the imposition of a system which does not take account of citizenship cannot be the basis of complaint under the Convention.

7.25 Furthermore, the State party denies that the judgement of the Federal Court has the effect of reducing the protection accorded to Australians under the Racial Discrimination Act 1975. The issues raised by the author under this allegation relate primarily to the interpretation of domestic legislation which should not be the subject of separate investigation by the Committee. The Racial Discrimination Act 1975 remains an appropriate and effective means of eradicating racial discrimination.

7.26 Finally, the State party notes the author's allegations that Australia continues to act in violation of article 5 (e) (i) on the grounds that the AMC has raised the pass criteria for the clinical examination to compensate for the discontinuation of the quota system. The author alleges that his failure to pass the clinical examination is evidence of this practice and of the fact that he is being victimized for lodging his original complaint with the HREOC in 1995. The State party contends that this complaint continues to be subject to the investigation of the HREOC and thus remains an inappropriate subject for the Committee's examination.

Counsel's comments

8.1 In his response to the State party's observations counsel indicates that unlike other countries where both local graduates and overseas trained doctors are assessed by sitting exactly the same national licensing examination, in Australia there is a differential system with one regime for overseas-trained doctors and another for Australian graduates. The Australian graduate is assessed by his/her university on the basis of what he/she has been taught. It is primarily an exercise in curriculum recall rather than an assessment of essential medical knowledge and clinical competence. The Australian Medical Council's own witnesses in the author's case before the HREOC have conceded that in undergraduate assessment the aim is to try and pass the student. Indeed, pass rates for final-year medical students in Australian universities are close to 100 per cent. On the contrary, the AMC multiple choice examination purports to assess whether a doctor possesses sufficient knowledge for safe practice. In 1995 the Australian Medical Council conducted a trial in which its 1994 multiple choice paper was submitted to final-year medical students at Monash University and Sydney University. The results of the trial clearly reveal that a higher assessment standard is applied to overseas-trained doctors than to Australian graduates and that the quota served to disadvantage overseas doctors when compared to local graduates.

8.2 As regards the AMC clinical examination, the differential nature of the system is even more manifest. The author has attempted the AMC clinical examination on four occasions. On each occasion he has been failed. He lodged a further complaint with the HREOC, which has not issued a decision yet. In the course of the hearing, the true nature of the AMC clinical examination system has been revealed. It has been exposed as a chaotic, unstructured and unreliable assessment tool which, in form and content, departs markedly from the system used to assess students in Australian universities. Moreover, the AMC's own internal working parties have emphasized the inadequacies of its examination system and the need to improve its reliability and validity.

8.3 Counsel provides a table showing pass rates in the AMC clinical examination by country of birth during the period 1995 to 1997. The pass rate for persons born in India is 45.9 per cent, for those born in the Middle East 43.6 per cent and for those born in Asia 43.5 per cent. For those born in the United States or Canada the pass rate is 55.6 per cent, for Western Europe 62.5 per cent, for the United Kingdom and Ireland 77.1 per cent and for South Africa 81.1 per cent. Counsel wonders whether these differential pass rates are merely a reflection of the quality of medical education in the countries in question or whether conscious or unconscious perceptions of racial "compatibility" play a part. It is well established that many people make conscious or unconscious judgements about a person's competence on the basis of race and colour and if an examination system has a format that gives free rein to any prejudices that may exist, then it is not competence alone which determines the result. Counsel also quotes a number of reports and statements by Australian institutions indicating that the country needs more trained doctors and that the system of accreditation of overseas-trained doctors is unfair and discriminatory.

8.4 With respect to the quota system, counsel argues that the quota was a quantitative control designed to shut out a number of overseas-trained doctors not because they were trained overseas but because they were from overseas. There is a close correlation between place of birth and place of training in that most people are educated in their country of birth. Accordingly, a restriction purportedly based on place of training is effectively a restriction based on national origin, particularly if that restriction is in no way connected to the issue of training. He also states that in the author's 1995 case before the HREOC there was no clear evidence of an oversupply of doctors in the country. Rather, it was the increase in the number of Australian medical graduates coupled with the automatic registration of doctors from the United Kingdom (which existed until recently) which had been the major reasons for the increase in doctors' numbers. It was also emphasized that the principal supply problem was one of geographical distribution of doctors, that the imposition of the quota was motivated by a desire to restrict the number of doctors to control the health expenditures of Commonwealth countries (and protect doctors' incomes) and that the Health Ministers' advisers were advocating immigration quotas, not examination quotas. The only reasonable conclusion to be drawn from the evidence of the Government's own witnesses and reports was that the decision to impose the quota was based not on fact and analysis but on feelings and perceptions.

8.5 The State party asserts that the author has been practising medicine in Australia under temporary registration and that he is subject to strict supervision and practice requirements while working as a practitioner in the public hospital system. This statement is totally untrue. The author has now worked as a doctor for 14 years, 10 of which have been in Australian public hospitals. He is classified as a Senior Hospital Medical Officer Year 5 and in his last position at Maroondah Hospital (a large hospital in Melbourne) he was the Night Senior, i. e. he was in charge of the whole hospital at night. Unfortunately, he is now unable to practise even under temporary registration. The Medical Board of Victoria, following advice from the Australian Medical Council regarding his examination results, has placed such tight restrictions on this registration that it has made him unemployable.

8.6 The State party asserts that the United States, Canada, the United Kingdom and New Zealand have similar examination systems to Australia. It does not say, however, that while the United States and Canada have an initial evaluating examination for overseas-trained doctors, the licensing examination is the same for both overseas-trained and locally trained doctors. Thus, there is not a differential system allowing differential standards and open to abuse, as is the case in Australia.

8.7 Counsel further states that the right to work must embrace the right to be fairly assessed to work in the occupation for which a person is qualified and not to be denied that right by reasons of a capricious assessment system or quota.

Issues and proceedings before the Committee

9.1 In accordance with rule 94, paragraph 6, of its rules of procedure, the Committee reconsidered the question of admissibility in the light of the observations made by the State party with respect to the Committee's decision of 19 August 1997 that declared the communication admissible. The Committee, however, did not find reasons to revoke its previous decision, since the State party's observations as well as the author's comments thereon referred mainly to the substance of the matter. In the circumstances, the Committee proceeded with the examination of the merits.

9.2 The main issue before the Committee is whether the examination and the quota system for overseas-trained doctors respect the author's right, under article 5 (e) (i) of the Convention, to work and to free choice of employment. The Committee notes in this respect that all overseas-trained doctors are subjected to the same quota system and are required to sit the same written and clinical examinations, irrespective of their race or national origin. Furthermore, on the basis of the information provided by the author it is not possible to reach the conclusion that the system works to the detriment of persons of a particular race or national origin. Even if the system favours doctors trained in Australian and New Zealand medical schools such an effect would not necessarily constitute discrimination on the basis of race or national origin since, according to the information provided, medical students in Australia do not share a single national origin.

9.3 In the Committee's view, there is no evidence to support the author's argument that he has been penalized in the clinical examination for having complained to the HREOC, in view of the fact that an independent observer, appointed by him, was present during two of his attempts.

10. The Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, is of the opinion that the facts as submitted do not disclose a violation of article 5 (e) (i) or any other provision of the Convention.

11.1 Pursuant to article 14, paragraph 7 (b), of the Convention, the Committee recommends that the State party take all necessary measures and give transparency to the procedure and curriculum established and conducted by the Australian Medical Council, so that the system is in no way discriminatory towards foreign candidates irrespective of their race or national or ethnic origin.

11.2 After considering several complaints concerning Australia under article 14 of the Convention, the Committee also recommends to the State party that every effort be made to avoid any delay in the consideration of all complaints by the Human Rights and Equal Opportunity Commission.

Decision concerning communication No. 10/1997

Submitted by:	Ziad Ben Ahmed Habassi [represented by counsel]
Alleged victim:	The author
State party concerned:	Denmark
Date of communication:	21 March 1997 (initial submission)

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 17 March 1999,

Having concluded its consideration of communication No. 10/1997, submitted to the Committee under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into consideration all written information made available to it by the author and the State party,

Bearing in mind rule 95 of its rules of procedure requiring it to formulate its opinion on the communication before it,

Adopts the following:

Opinion

1. The author of the communication is Ziad Ben Ahmed Habassi, a Tunisian citizen born in 1972 currently residing in Århus, Denmark. He claims to be a victim of violation by Denmark of article 2, paragraph 1 (d), and article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination. He is represented by counsel.

The facts as submitted by the author

2.1 On 17 May 1996 the author visited the shop "Scandinavian Car Styling" to purchase an alarm set for his car. When he inquired about procedures for obtaining a loan he was informed that "Scandinavian Car Styling" cooperated with Sparbank Vest, a local bank, and was given a loan application form which he completed and returned immediately to the shop. The application form included, *inter alia*, a standard provision according to which the person applying for the loan declared himself or herself to be a Danish citizen. The author, who had a permanent residence permit in Denmark and was married to a Danish citizen, signed the form in spite of this provision.

2.2 Subsequently, Sparbank Vest informed the author that it would approve the loan only if he could produce a Danish passport or if his wife was indicated as applicant. The author was also informed that it was the general policy of the bank not to approve loans to non-Danish citizens.

2.3 The author contacted the Documentary and Advisory Center for Racial Discrimination (DRC) in Copenhagen, an independent institution which had been in contact with Sparbank Vest on previous occasions about the bank's loan policy vis à vis foreigners. In a letter dated 10 January 1996 the DRC had requested Sparbank Vest to indicate the reasons for a loan policy requiring applicants to declare that they were Danish citizens. Sparbank Vest had informed the DRC, by letter of 3 March 1996, that the requirement of citizenship mentioned in the application form was to be understood merely as a requirement of permanent residence in Denmark. Later, the DRC requested information from the bank about the number of foreigners who had actually obtained loans. On 9 April 1996 Sparbank Vest informed the DRC that the bank did not register whether a customer was a Danish citizen or not and therefore it was not in a position to provide the information requested. It also said that in cases of foreign applicants the bank made an evaluation taking into account whether the connection to Denmark had a temporary character. In the bank's experience, only by a permanent and stable connection to the country was it possible to provide the necessary service and ensure stable communication with the customer.

2.4 On 23 May 1996 the DRC reported the incident concerning the author to the police department in Skive on behalf of the author, alleging that the bank had violated the Danish Act on the prohibition of differential treatment on the basis of race. The DRC enclosed copies of its previous correspondence with Sparbank Vest. By letter dated 12 August 1996 the police informed the DRC that the investigation had been discontinued given the lack of evidence that an unlawful act had been committed. The letter indicated that the requirement of Danish citizenship had to be considered in connection with the possibility of enforcement and that the bank had given assurances that the provision would be deleted when printing new application forms.

2.5 On 21 August 1996 the DRC lodged a complaint with the State Prosecutor in Viborg, challenging the decision of the police department to consider the citizenship criterion legitimate. The author had a clear permanent connection to Denmark in view of the fact that he was married to a Danish citizen and had a regular job. The fact that the bank still insisted on documentation with regard to Danish citizenship constituted a discriminatory act which could not be justified by the bank's interest in enforcing its claim. The DRC also emphasized the fact that Sparbank Vest had not provided any information regarding foreign customers, despite the fact that such information was relevant to determine whether or not the loan policy was discriminatory. By letter dated 6 November 1996 the State Prosecutor informed the DRC that he did not see any reason to overrule the police decision.

2.6 The author indicates that the decision of the State Prosecutor is final, in accordance with section 101 of the Danish Administration of Justice Act. He also states that questions relating to bringing charges against individuals are entirely at the discretion of the police and, therefore, the author has no possibility of bringing the case before a court.

The complaint

3.1 Counsel claims that the facts stated above amount to violations of article 2, paragraph 1 (d), and article 6 of the Convention, according to which alleged cases of discrimination have to be investigated thoroughly by the national authorities. In the present case neither the police department of Skive nor the State Prosecutor examined whether the bank's loan policy constituted indirect discrimination on the basis of national origin and race. In particular, they should have examined the following issues: first, to what extent persons applying for loans were requested to show their passports; second, to what extent Sparbank Vest granted loans to non Danish citizens; third, to what extent Sparbank Vest granted loans to Danish citizens living abroad.

3.2 Counsel further claims that in cases such as the one under consideration there might be a reasonable justification for permanent residence. However, if loans were actually granted to Danish citizens who did not have their permanent residence in Denmark, the criterion of citizenship would in fact constitute racial discrimination, in accordance with article 1, subparagraph 1, of the Convention. It would be especially relevant for the police to investigate whether an intentional or an unintentional act of discrimination in violation of the Convention had taken place.

State party's submission on admissibility and counsel's comments

4.1 In a submission dated 28 April 1998 the State party notes that according to section 1 (1) of Act No. 626 (Act against Discrimination) any person who, while performing occupational or non-profit activities, refuses to serve a person on the same conditions as others due to that person's race, colour, national or ethnic origin, religion or sexual orientation is liable to a fine or imprisonment. Violation of the Act is subject to public prosecution, i.e. private individuals cannot bring a case before the courts.

4.2 If the prosecutor considers that no offence has been committed, or that it will not be possible to bring evidence sufficient for conviction and, therefore, discontinues the investigation, the injured party still has the possibility of bringing a civil action claiming compensation for pecuniary or non-pecuniary damage. An action claiming compensation for pecuniary damage is not relevant in the present case, since the loan was actually granted with the applicant's wife listed as borrower and the applicant as spouse. It would, however, have been relevant to bring a civil declaratory action against the bank claiming that it acted against the law when it refused the loan application. Such action is recognized in domestic case-law. Accordingly, the State party considers that a civil action is a possible remedy which the applicant should have made use of and that the non-use of this remedy renders the case inadmissible.

4.3 The State party also argues that the author had the possibility of complaining to the Ombudsman of the Danish Parliament about the decision of the prosecutor. The fact that the prosecutors are part of the public administration means that their activities are subject to the Ombudsman's power to investigate whether they pursue unlawful aims, whether they make arbitrary or unreasonable decisions or whether they commit errors or omissions in other ways in the performance of their duties. The result of a complaint to the Ombudsman may be that the police and the prosecutor reopen the investigation.

4.4 The State party also argues that the communication is manifestly ill-founded. Its objections, however, are explained in its assessment of the merits of the case.

5.1 Counsel contends that the State party fails to indicate on which provision of the Danish Act on Tort it bases its claim that civil action can be taken against Sparbank Vest. He assumes that the State party refers to section 26 of the Act. However, to his knowledge, no cases relating to racial discrimination have ever been decided by Danish courts on the basis of that section. Accordingly, there is no evidence in Danish case-law to support the interpretation given by the State party.

5.2 Counsel also contends that a private party may only be liable under section 26 if there is an act which infringes national law. In the present case, however, the relevant bodies within the prosecution system did not find any reason to investigate; it would, therefore, have been very difficult to convince a court that there was any basis for liability on the part of Sparbank Vest. In those circumstances a theoretical remedy based on section 26 of the Danish Act on Tort does not seem to be an effective remedy within the meaning of the Convention.

5.3 With respect to the possibility of filing a complaint with the Ombudsman, counsel argues that such remedy is irrelevant, since the Ombudsman's decisions are not legally binding.

The Committee's admissibility decision

6.1 During its fifty-third session in August 1998 the Committee examined the admissibility of the communication. It duly considered the State party's contention that the author had failed to exhaust domestic remedies but concluded that the civil remedies proposed by the State party could not be considered an adequate avenue of redress. The complaint which was filed first with the police department and subsequently with the State Prosecutor alleged the commission of a criminal offence and sought a conviction under the Danish Act against Discrimination. The same objective could not be achieved by instituting a civil action, which would lead only to compensation for damages.

6.2 At the same time the Committee was not convinced that a civil action would have any prospect of success, given that the State Prosecutor had not considered it pertinent to initiate criminal proceedings regarding the applicant's claim. Nor was there much evidence in the information brought to the attention of the Committee that a complaint before the Ombudsman would result in the case being reopened. Any decision to institute criminal proceedings would still be subject to the discretion of the State Prosecutor. No possibilities would then be left for the complainant to file a case before a court.

6.3 Accordingly, on 17 August 1998, the Committee declared the communication admissible.

State party's observations on the merits

7.1 The State party submits that Mr. Habassi complained to the police on 28 May 1996. On 12 August 1996 the police interviewed the credit manager of Sparbank Vest in Skive, who was notified of Mr. Habassi's complaint. According to the police report the manager stated that all loan applicants signed the same type of application form and that the Danish Bankers Association had decided that the phrase "that I am a Danish national" would be deleted when the application forms were reprinted. No further investigative steps were taken. By letter dated 12 August 1996 the Chief Constable in Skive informed the DRC that it had decided to discontinue the investigation, since it could not reasonably be assumed that a criminal offence subject to public prosecution had been committed. The letter also provided details on the possibility of filing an action for damages and enclosed guidelines on how to file a complaint. By letter of the same date the Chief Constable also informed Sparbank Vest that the investigation had been discontinued.

7.2 The State party recalls that on 21 August 1996 the DRC complained about the Chief Constable's decision to the District Public Prosecutor in Viborg. DRC stated in its complaint that it found it worrying that the Chief Constable apparently considered the requirement of nationality motivated by the need to ensure enforcement to be a lawful criterion. Mr. Habassi had a Danish civil registration number and a national register address in Denmark. That in itself ought to have been sufficient to prove his ties with Denmark. In addition, he stated on the loan application that he received a salary and had a Danish spouse. The bank's practice of demanding documentation about nationality was a discriminatory act which could not be justified by considerations of enforcement.

7.3 DRC also stated that for Mr. Habassi it was immaterial whether the refusal of the bank was based on negative attitudes towards ethnic minorities (for instance that they are poor debtors) or on genuine concern on the part of the bank about enforcement. The salient fact was that despite having satisfied all the conditions for being granted a loan, he was required (probably because of his foreign-sounding name) to provide further documentation. It was therefore Mr. Habassi's Middle East background that was the cause of the refusal and not the more formal criterion of nationality. The bank's statement that the requirement of Danish nationality would be removed from the application forms did not alter the fact that Mr. Habassi had been exposed to unlawful differential treatment against which the Danish authorities had a duty to offer protection pursuant to the Convention.

7.4 The State party also recalls that the District Public Prosecutor found no basis for reversing the Chief Constable's decision and argued, in particular, that neither the Act against Discrimination nor the Convention include nationality as an independent ground of discrimination. Against this background it must be assumed that discrimination against foreign nationals only violates the Act to the extent that it could be assimilated to discrimination on the basis of national origin or one of the other grounds listed in section 1 (1). According to the legislative history of the Act, it had to be presumed that certain forms of differential treatment could be considered lawful if they pursued a legitimate aim seen in the light of the purpose of the Act. In the processing of loan applications the applicant's ties with Denmark may be of importance, among other things, for assessing the possibility of enforcement of the creditor's claim. In consideration of this the data concerning the applicant's nationality were objectively justified.

7.5 The State party argues that the police investigation in the present case satisfies the requirement that can be inferred from the Convention and the Committee's practice. According to the Administration of Justice Act the police initiates an investigation when it can be reasonably assumed that a criminal offence subject to public prosecution has been committed. The purpose of the investigation is to clarify whether the conditions for imposing criminal liability or other criminal sanctions have been fulfilled. The police will reject information presented if no basis is found for initiating an investigation. If there is no basis for continuing an investigation already initiated, the decision to discontinue it can also be made by the police, provided no provisional charge has been made.

7.6 In the State party's opinion, there is no basis for criticizing the Chief Constable's and the District Public Prosecutor's decisions, which were taken after an investigation had actually been carried out. The police took the information seriously and its decision was not unsubstantiated. The decision was not only based on the information forwarded by the author, including the written correspondence with the bank about its credit policy, but also on interviews with the author and a credit manager of the bank.

7.7 The State party refers to the Committee's opinion regarding communication 4/1991 in which the Committee stated that "when threats of racial violence are made and especially when they are made in public and by a group, it is incumbent upon the State to investigate with due diligence and expedition".[a] It argues, however, that the present case is of a different nature and therefore the Committee cannot reasonably set out the same requirements to investigate as in the said opinion. Even if the requirement that it is incumbent on the police to "investigate with due diligence and expedition" were to apply in the present case, where the loan application was actually granted, the State party considers that the requirement was met. Although the information presented did not lead to prosecution, the handling of it by the police did afford the applicant effective protection and remedies within the meaning of article 2, paragraph 1 (d), and article 6 of the Convention.

7.8 The State party further contends that there is no basis either for criticizing the legal assessment made by the prosecutor. It is noted in this connection that not every differentiation of treatment is unlawful discrimination within the meaning of the Convention. In General Recommendation XIV on article 1, paragraph 1, of the Convention the Committee stated that "a differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate (...). In considering the criteria that may have been employed, the Committee will acknowledge that particular actions may have varied purposes. In seeking to determine whether an action has an effect contrary to the Convention it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent or national or ethnic origin." The decisions of both the Chief Constable and the District Public Prosecutor show that the decisions were based on the fact that differentiation of treatment that pursues a legitimate aim and respects the requirement of proportionality is not prohibited discrimination.

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[a] *L. K. v. the Netherlands* (CERD/C/42/D/4/1991), para. 6.6.

7.9 Finally, the State party dismisses the author's claims that questions relating to the pursuance by the police of charges against individuals are entirely up to the discretion of the police and that there is no possibility of bringing the case before the Danish courts. Firstly, it is possible to complain to the relevant District Public Prosecutor; secondly, the applicant had the possibility of filing a civil action against the bank; and thirdly, the applicant had the possibility of complaining to the Ombudsman. The effect of such complaint to the Ombudsman may be that the police and the prosecutor reopen the investigation.

Counsel's comments

8.1 Counsel contends that the police interviewed the author but had only a brief telephone conversation with the bank. No detailed investigation, for example about the requirements concerning Danish citizens living abroad, was carried out. The police did not at all examine whether the case amounted to indirect discrimination within the meaning of the Convention. The Committee, however, stressed the duty of States parties to duly investigate reported incidents of racial discrimination in its concluding observations regarding communication 4/1991.

8.2 The State party states that the requirement of Danish citizenship was only to be seen in connection with the assessment of the ties with Denmark of the person applying for a loan in correlation, therefore, with the possibilities of subsequent judicial recovery of the amount of the loan in case of default. Counsel underlines that such reason was not mentioned by the credit manager of Sparbank Vest, as reflected in the police report. The report says that the police assistant E. P. had contacted the credit director of Sparbank Vest who was of the opinion that the bank had not done anything illegal in connection with the loan application in question, since all applicants signed the same type of application form with the formulation "that I am a Danish citizen". The bank did not mention any particular reason for its practice. It did not, in particular, declare that there was a requirement of residence due to the possibility of enforcing claims against debtors. It appears, therefore, that the reason in question had been made up by the police in Skive on their own initiative. Even if the reason came from the bank itself it appears to be highly irrelevant for an evaluation of whether the requirements of the Convention have been met.

8.3 It is clear that Danish citizenship is not a guarantee for subsequent judicial recovery of the defaulted amount if the Danish citizen lives, for example, in Tunisia. The application of a criterion of citizenship for the reason given by the police would indeed be a serious indication that indirect discrimination on grounds prohibited by the Convention had taken place. The possibilities of subsequent judicial recovery would rather justify a criterion of residence. However, with respect to such criterion counsel draws the attention of the Committee to a letter of 6 April 1995 addressed to the DRC in which the Minister of Business Affairs (*Erhvervsministeren*) expresses the view that a credit policy according to which no credit is granted to persons unless they have lived in Denmark for at least five years would be contrary to the discrimination rules. It is the author's conclusion that the police did not at all attempt to clarify with the bank the real reason behind the requirement of citizenship.

8.4 Counsel states that, according to the State party, the decisions of the Chief Constable and the State Prosecutor were based on the fact that differentiation of treatment that pursues a legitimate aim and respects the requirements of proportionality is not prohibited discrimination. He argues, however, that the authorities did not in fact examine whether a legitimate aim was pursued by the bank and that in cases of alleged discrimination the decision whether or not to initiate proceedings must be taken after a thorough investigation of the alleged cases of discrimination.

Examination of the merits

9.1 The Committee has considered the author's case in the light of all the submissions and documentary evidence produced by the parties, as required under article 14, paragraph 7 (a), of the Convention and rule 95 of its rules of procedure. It bases its findings on the following considerations.

9.2 Financial means are often needed to facilitate integration in society. To have access to the credit market and be allowed to apply for a financial loan on the same conditions as those which are valid for the majority in the society is, therefore, an important issue.

9.3 In the present case the author was refused a loan by a Danish bank on the sole ground of his non-Danish nationality and was told that the nationality requirement was motivated by the need to ensure that the loan was repaid. In the opinion of the Committee, however, nationality is not the most appropriate requisite when investigating a person's will or capacity to reimburse a loan. The applicant's permanent residence or the place where his employment, property or family ties are to be found may be more relevant in this context. A citizen may move abroad or have all his property in another country and thus evade all attempts to enforce a claim of repayment. Accordingly, the Committee finds that, on the basis of article 2, paragraph (d), of the Convention, it is appropriate to initiate a proper investigation into the real reasons behind the bank's loan policy vis à vis foreign residents, in order to ascertain whether or not criteria involving racial discrimination, within the meaning of article 1 of the Convention, are being applied.

9.4 The Committee notes that the author, considering the incident an offence under the Danish Act against Discrimination, reported it to the police. First the police and subsequently the State Prosecutor in Viborg accepted the explanations provided by a representative of the bank and decided not to investigate the case further. In the Committee's opinion, however, the steps taken by the police and the State Prosecutor were insufficient to determine whether or not an act of racial discrimination had taken place.

10. In the circumstances, the Committee is of the view that the author was denied effective remedy within the meaning of article 6 of the Convention in connection with article 2 (d).

11.1 The Committee recommends that the State party take measures to counteract racial discrimination in the loan market.

11.2 The Committee further recommends that the State party provide the applicant with reparation or satisfaction commensurate with any damage he has suffered.

12. Pursuant to rule 95, paragraph 5, of its rules of procedure, the Committee would wish to receive information, as appropriate and in due course, on any relevant measures taken by the State party with respect to the recommendations set out in paragraphs 11.1 and 11.2.

B. Fifty-fifth session

Decision concerning communication No. 6/1995

Submitted by:	Z.U.B.S.
Alleged victim:	The author
State party concerned:	Australia
Date of communication:	17 January 1995 (initial submission)

The Committee on the Elimination of Racial Discrimination established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 26 August 1999,

Having concluded its consideration of communication No. 6/1995, submitted to the Committee under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into consideration all written information made available to it by the author and the State party,

Bearing in mind rule 95 of its rules of procedure requiring it to formulate its opinion on the communication before it,

Adopts the following:

Opinion

1. The author of the communication is Mr. Z.U.B.S., an Australian citizen of Pakistani origin born in 1955, currently residing in Eastwood, New South Wales, Australia. He claims to be a victim of violations by Australia of several provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

The facts as submitted by the author

2.1 In February 1993 the author, who had by then been residing for approximately two years in Australia, was hired as an engineering officer by the New South Wales Fire Brigade (NSWFB), which is part of the Public Service. Before being hired, he had applied for two higher-level positions which he claims were commensurate with his qualifications, experience and skills. He was, however, interviewed and hired for a lower-level position for which he had not applied and for which he contends that he was not provided with a job description. He says he was adversely treated in appointment because he lacked (so-called) local knowledge, a requirement that was not mentioned in the position description or the list of desirable criteria and had no relevance to the job performance. He claims that local experience was a requirement created by the selection committee after receiving his personal details, which reflected his past professional experience of 13 years in Pakistan and Saudi Arabia.

2.2 According to the author, his position was identical to that of two other engineering officers. One of them was Australian born Anglo-origin and the other was a Buddhist Malaysian-Chinese. The three were hired almost at the same time. He claims that the difference in treatment between himself (an experienced professional engineer) and the other two officers (sub-technicians) was racially motivated. Such differentiation allegedly included that the author's qualifications exceeded those of his colleagues, that his salary was inferior to that of one of the officers and that he was placed on six months probation, unlike one of the officers. In each case, he was treated the same as the other colleague, although he argues that he was not informed of the probationary requirement.

2.3 The author contends that he was given a heavier workload compared to his colleagues, that his participation in business trips was limited, and that his access to workplace information was curtailed. He alleges harassment and unfair treatment in the performance of his duties; he notes, for example, that one day he was ridiculed for refusing to drink beer with colleagues towards the end of one day's duties, although he had pointed out that his origin and religion did not allow him to drink alcoholic beverages. He says that he was continuously reminded of his background (professional and social) from Pakistan and Saudi Arabia through racially motivated comments.

2.4 After he had filed two complaints with the relevant department under the Fire Brigade's grievance policy, the management prepared a report on his "poor performance". On 30 July 1993, he lodged a complaint of racial discrimination in employment with the New South Wales Anti-Discrimination Board (ADB), indicating that the matter was "urgent". On 6 August 1993 his employment was terminated, allegedly without written notice. The author informed the ADB of this development by fax of 9 August 1993. After his dismissal the three positions were upgraded and the other two officers were re-employed in two of the three vacant positions without competition.

2.5 The author alleges that the handling of his claim by the ADB was biased and discriminatory, and that the bias was racially motivated. He bases this assessment on the delay in the handling of his case which, in his opinion, led to his being dismissed. He contends that in a telephone conversation with a senior conciliation officer of the ADB on 12 August 1993, the ADB had taken part of his former employer, as ADB agreed with the employer's suggestion that he should appeal to the Government and Related Employees Appeal Tribunal (GREAT). GREAT examines cases of wrongful dismissal, whereas ADB processes cases of racial discrimination. The author was therefore reluctant to file his grievances with GREAT, and took ADB's suggestion to mean that ADB did not believe that it was faced with a case of racial discrimination.

2.6 The author consulted with the NSW Legal Aid Commission (LAC) with a view to obtaining legal aid for proceedings before GREAT. However, in accordance with the Legal Aid Commission Act, legal aid is not provided in respect of matters before the GREAT. On 30 August 1993, the author addressed a letter to the ADB, confirming his decision not to proceed with an appeal before GREAT and asking ADB to give priority to his complaint.

2.7 The author also contacted the New South Wales Council for Civil Liberties (NSWCCL) which informed him, on 1 July 1994, that his complaint had been forwarded to the Council's Complaints Sub-Committee for further consideration. After that, the NSWCCL never contacted him again.

2.8 On 19 December 1994, ADB informed the author that its investigation had been completed, and that the complaint had been found without merit. No reasons for this evaluation were provided. At the same time he was informed of his right to appeal the decision within 21 days to the Equal Opportunity Tribunal (EOT). However, the procedure before the EOT is long and expensive, and the author could not pay the costs for representation since he remained unemployed after his dismissal. He claims that the LAC again refused to provide him with legal assistance on the basis of biased criteria. He further complains about the manner in which the EOT and the NSW Ombudsman handled his case subsequently.

2.9 Finally, the author claims that the conduct and practices of the State party's organs, including the EOT, had a discriminatory effect on his professional career and that he has not been able to find a suitable employment since his dismissal in 1993.

The complaint

3. It is submitted by the author that the facts stated above amount to violations of the following provisions of the Convention:

- Articles 3, 5 (c), 5 (e) (i) and 6 by the NSWFB, in that he was discriminated on racial grounds in the terms of his appointment, in his employment conditions and in the termination of his employment. He also alleged race-based harassment and offensive behaviour on the part of colleagues.
- Articles 5 (a) and 6 by the ADB, the EOT, the Ombudsman and the LAC. He contends that the ADB did not handle his urgent complaint impartially, that it victimized and disadvantaged him and that by delaying the case for 22 months it protected the personnel of the NSWFB. He also complains about the way in which EOT evaluated the facts and the evidence presented during the hearings held from 11 to 15 September 1995 as well as the conduct of the Ombudsman who, without contacting him, accepted the ADB's version of the dispute. He was particularly

disappointed in view of the fact that the NSW Ombudsman in office served as Race Discrimination Commissioner in the Federal Human Rights and Equal Opportunities Commission for several years and was fully aware of racism in Australia, including the ADB's general attitude in handling complaints of race discrimination.

- Article 2, in connection with the above-mentioned provisions.

State party's observations on admissibility and author's comments thereon

4.1 In a submission dated March 1996, the State party noted that when the author initially submitted his case to the Committee, it was clearly inadmissible for non-exhaustion of domestic remedies, as the author had then instituted proceedings before the EOT. On 30 October 1995, however, the EOT handed down a judgement in the author's favour by which it awarded him $A 40,000 of damages and ordered his former employer to address a written apology (within 14 days) to him. While the EOT dismissed the author's claims of racial discrimination, it did find that the author's dismissal as a result of his complaint amounted to victimization. Victimization of an individual who has initiated a complaint of racial discrimination is unlawful under section 50 of the New South Wales Anti-Discrimination Act of 1977.

4.2 The State party considered that with the judgement of the EOT, the author's case should be considered closed. It added that the author could have appealed the judgement on a point of law, but that no notification of appeal had been received.

4.3 In June 1997, the State party transmitted further admissibility observations to the Committee. It argued that the claim under article 2 of the Convention should be considered inadmissible as incompatible with the provisions of the Convention, pursuant to rule 91 (c) of the rules of procedure. It pointed out that the Committee had no jurisdiction to review the laws of Australia *in abstracto*, and that, in addition, no *specific* allegations had been made by the author in relation to article 2. If the Committee were to consider itself competent to review the allegation, then it should be rejected as inadmissible *ratione materiae*. It argued that the author's rights under article 2 were accessory in nature, and that if no violation under articles 3, 5 or 6 of the Convention was established in relation to the conduct of the NSWFB, the ADB, the EOT, the Ombudsman's Office or the LAC, then no violation of article 2 could be established either. Subsidiarily, the State party contended that if the Committee were to hold that article 2 was not accessory in nature, it remained the case that the author did not provide *prima facie* evidence that the above bodies engaged in acts or practices of racial discrimination against him.

4.4 The State party also rejected the author's claims of a violation of article 3 of the Convention in that he "was segregated ... from English speaking background personnel during a trip to Melbourne and in an external training course". That was deemed inadmissible as incompatible *ratione materiae* with the Convention. For the State party, the author had failed to raise an issue in relation to article 3. Sudsidiarily, it was argued that the claim under article 3 had been insufficiently substantiated for the purposes of admissibility: there was no system of racial segregation or apartheid in Australia.

4.5 The State party submitted that the claim of a violation of article 5 (c) and (e) (i) of the Convention by the NSWFB, the EOT, the ADB, the Ombudsman and the LAC was inadmissible *ratione materiae*. In relation to the allegations against the conduct of the case by the EOT and the LAC it further argued that the author had failed to exhaust available and effective domestic remedies.

4.6 As to the author's claim that the NSWFB violated his rights under subparagraph 5 (c), to *inter alia*, have equal access to public service and subparagraph 5 (e) (i), to work, to free choice of employment, to just and favourable conditions of work and just remuneration, the State party argued that:

- These allegations were reviewed by Australian tribunals in good faith and in accordance with established procedures. It would be incompatible with the role of the Committee to act as a further court of appeal in these circumstances.
- Subsidiarily, the State party submitted that alleged racial discrimination in employment had been insufficiently substantiated, for purposes of admissibility, as the author had not provided *prima facie* evidence which might give rise to a finding of racial discrimination.

4.7 As to the claim that the author's right to equal treatment before the ADB, the EOT, the Ombudsman and the LAC were violated, the State party argued that:

- These allegations (with the exception of the one against the LAC) were incompatible with the provisions of the Convention, on the ground that the Committee was not mandated to review the determination of facts and law of domestic tribunals, in particular in cases in which the complainant failed to exhaust available and effective domestic remedies.

- The claims related to the unfair and unequal treatment of the author by EOT and LAC were inadmissible, as the author failed to exhaust available domestic remedies. They could have been reviewed, respectively, by the New South Wales Supreme Court and the Legal Aid Review Committee. Neither avenue was pursued by the author.

4.8 With respect to the author's contention that the NSWFB, the ADB, the EOT, the Ombudsman and the LAC violated his rights under article 6 of the Convention, the State party submitted that:

- This allegation was inadmissible *ratione materiae*, as the alleged violations of the author's rights by the NSWFB and the ADB were properly reviewed by the domestic courts, "in a reasonable manner and in accordance with the law". The State party emphasizes that it was incompatible with the role of the Committee under the Convention to act as a further court of appeal in these circumstances. Australia had a domestic system which provided effective protection and remedies against any acts of racial discrimination. The mere fact that the author's allegations were dismissed did not mean that they were ineffective.
- Subsidiarily, the State party argued that the rights under article 6 of the Convention were similar to those enshrined in article 2 of the International Covenant on Civil and Political Rights. These are general rights which are accessory in nature and linked to the specific rights enshrined in the Convention. As no independent violation of articles 2, 3 and 5 of the Convention had been made out by the author, no violation of article 6 could be established.
- Still subsidiarily, the State party submitted that the allegations under article 6 had been insufficiently substantiated, for purposes of admissibility, as the author did not submit any *prima facie* evidence that he did not have the opportunity to seek effective protection and remedies against alleged acts of racial discrimination in his employment, in a manner similar to every individual in New South Wales.

5. In comments the author reiterated his allegations, claiming *inter alia* that:

- "six Anglo-Celtic officials" of the NSWFB "maliciously employed" him, treated him unfairly during his employment and victimized him when he complained about their attitude;
- he had exhausted all available domestic remedies under Australian anti-discrimination legislation, "although the remedies were unfair, extensively exhaustive and prolonged";
- he did not file an appeal against the decision of the LAC because the LAC's advice to appeal for a review of its decision "was not in good faith and was misleading";
- as for the proceedings before the EOT, the case was conducted "in a biased environment". A NSWFB barrister "tampered with subpoena documents" and removed files from the record. Moreover, EOT "planted" a document in his personnel file "in order to dismiss the case of racial discrimination against the members of the dominant race".

The Committee's admissibility decision

6.1 At its fifty-first session, in August 1997, the Committee examined the admissibility of the communication. The Committee noted that the author had alleged violations of articles 2 and 6 of the Convention by all the instances seized of his grievances, and of article 3 by the New South Wales Fire Brigade. The Committee did not agree with the State party's assessment that the author had failed to substantiate these allegations for purposes of admissibility and considered that only the examination on the merits would enable it to consider the substance of the author's claim.

6.2 The Committee noted that the author's claims under article 5 (c) and (e) (i) against his former employer, the New South Wales Fire Brigade, which were reviewed by the Equal Opportunities Tribunal, dismissed the author's claims as far as they were related to racial discrimination. The Committee did not agree with the State party's argument that to admit the author's claim would amount to a review, on appeal, of all the facts and the evidence in his case. At the admissibility stage, the Committee was satisfied that the author's claims were compatible with the rights protected by the Convention, under rule 91 (c) of the rules of procedure.

6.3 The author had alleged a violation of article 5 (a) of the Convention by those administrative and judicial organs seized of his case. The Committee did not share the State party's argument that this claim was incompatible with the provisions of the Convention, since to declare it admissible would amount to a review of the determination of facts and law by Australian tribunals. Only an examination on the merits would allow the committee to determine whether the author was treated b y these organs in any way different from any other individual subject to their jurisdiction. The same consideration as in paragraph 6.2 above *in fine* applied.

6.4 Finally, the State party had claimed that the author could have appealed the judgment of the EOT of 30 October 1995 to the Supreme Court of New South Wales, and could have availed himself of the opportunity to have the decisions of the LAC to deny him legal aid by the Legal Aid Review Committee. The Committee considers that even if this possibility still remained open to the author, it would be necessary to take into account the length of the appeal process; as the consideration of the author's grievances took in excess of two years before the ADB and the EOT, the circumstances of the present case justified the conclusion that the application of domestic remedies would be unreasonably prolonged, within the meaning of article 14, paragraph 7 (a), of the Convention.

6.5 Accordingly, on 19 August 1997 the Committee declared the communication admissible.

State party's observations on the merits

A. Observations concerning author's claims under article 2 of the Convention

7.1 In a submission dated 3 August 1998 the State party argues, with respect to the author's claims under article 2 of the Convention, that article 2 deals with the general observations of State parties to condemn racial discrimination and to pursue policies of eliminating all forms of racial discrimination and promoting interracial understanding. Any rights which may arise under article 2 of the Convention are also general rights which are accessory in nature and linked to the specific rights enshrined in the Convention. Accordingly, a violation of article 2 may only be found once a violation of another right has been established. Since no other violation of the Convention has been established, as submitted below, the author's allegations with respect to article 2 are without merit. Furthermore, the allegation that the State party has violated the rights of the author under article 2 of the Convention is incompatible with the role of the Committee on the ground that the Committee has no jurisdiction to review the laws of Australia in the abstract.

7.2 If the Committee is of the view that the rights under article 2 of the Convention are not accessory in nature, then the State party submits, in the alternative, that the allegations lack merit. The laws and policies of the Australian Government are designed to eliminate direct and indirect racial discrimination and to actively promote racial equality. Anti-discrimination legislation, policies and programmes exist at both the federal and the State and Territory level to ensure that all individuals are treated on the basis of racial equality and to ensure an effective means of redress if racial discrimination occurs. The laws, practices and policies in relation to the NSWFB, the ADB, the EOT, the Ombudsman and the LAC fully conform with Australia's obligations under the Convention. The author has provided no evidence that the NSWFB, the ADB, the EOT, the Ombudsman and the LAC engaged in acts or practices of racial discrimination against him.

B. Observations concerning alleged violations of the Convention by the New South Wales Fire Brigade

7.3 The author's allegations that his rights under the Convention were violated by the NSWFB concern three different issues: his appointment, conditions during his employment and the termination of his employment.

7.4 The author alleges that he was discriminated against by not being appointed to the position of Facilities Management Officer or Service Manager, for which he had applied, because his overseas qualifications and experience were not taken into consideration. The State party describes the process leading to the fulfilment of those posts and states that the author's academic qualifications were not at any stage disregarded nor devalued; however, he lacked the experience required, in particular local experience. He was granted an interview for the position of Service Manager, during which he did not demonstrate that he had sufficient relevant experience or sufficient knowledge and understanding of the duties and requirements of the position.

7.5 The unsuccessful applications were destroyed in December 1993, in accordance with the NSWFB policy to retain applications for 12 months only. The author first raised a complaint over the selection process when he made his complaints to the EOT in 1995. Prior to this, his complaints had been restricted to work-related issues.

7.6 The author did not apply initially for the three vacant positions of Engineering Officer. However, the selection committee contained some common membership with the selection committee for the service manager communications position. Recognizing that the author met all the requirements for one of the three positions he was invited to submit a late application. He submitted an application on 21 December 1992 and on 28 January 1993 he was recommended for appointment on probation.

7.7 Regarding the claim that one of the other two engineering officers was getting more salary than the author the State party indicates that the reason was that the said officer had already been in the Public Service for some time.

7.8 As to probation, the usual practice is to appoint persons on probation when first joining the public service.

The author had not been advised that his appointment was on probation due to a "systemic error"; the restructure of the NSWFB and subsequent recruitment action had created heavy demands on the personnel area. A number of letters of appointment were sent out around the same time as that of the author's which neglected to mention appointment on probation.

7.9 The EOT judgement, a copy of which was provided by the State party, indicates, in particular: "There is no doubt that Mr. S. was treated differently to his colleagues in relation to his appointment to the position of Engineering Officer, both with respect to his salary and other terms of his employment. The issue is whether this amounts to discrimination on the ground of race. We are of the view, after a careful consideration of all the evidence, that the reason that Mr. S. was treated differently was that Mr. S. did not have sufficient local experience. In our view this does not amount to discrimination on the ground of race. The failure of the Respondent to inform Mr. S. that he was only appointed for a probationary period was unfortunate. Without doubt Mr. S. had ground for complaint in relation to his appointment. His contract was breached at the outset. That is not a matter for us to redress. He was probably exploited. But he was not discriminated against unlawfully. Whilst he has been treated adversely, it was not on the ground concerning his race or a characteristic of his race or a characteristic imputed to his race".

7.10 The EOT found that, while the author's supervisor had a "robust approach" to the work to be done by those within his section, he did not treat the author differently to anyone else in the section, nor was the author treated differently from his colleagues to any marked degree with reference to the tasks assigned to him.

7.11 The author had access to workplace information in the same manner as other officers. All files were available to him and he was provided with all information relevant to the projects for which he was responsible. In relation to business trips he was treated in the same manner as the other engineering officers. The author was not segregated from his colleagues on a trip to Melbourne. He did not participate in that trip because his presence was not required. As for his exclusion from the external training course on Fleet Mobile Communication in June 1993, it was due to financial constraints and his lack of seniority. As to training opportunities, the allegation appears to relate to a course for MS Projects/Windows that the other engineering officers attended while the author did not. However, the author attended an Excel computer training course. Further, the EOT found that the NSWFB was justified in excluding the author from both the business trip to Melbourne and the Fleet Mobile Communication course, due to his lack of seniority and the need to avoid unnecessary expenditure of public funds.

7.12 When the author complained that his workload was too high, this was reviewed but not considered to be the case by his supervisors. He was granted an extension to complete a project on at least one occasion in response to his request. The EOT found it correct that at one stage the author had five projects assigned to him while his colleagues had two each. However, an analysis of the tasks assigned to the latter showed that they were of substantially greater complexity and scope than those assigned to the author. Moreover, the EOT did not accept the author's case that he was required to attend to duties of contract administration that were of higher accountability than those of his colleagues. Material tendered by the NSWFB indicated that at various times throughout their employment all three were required to attend to duties of contract administration and consideration of vendor submissions.

7.13 Several comments alleged to have been made by the author's colleagues were carefully evaluated by the EOT, which concluded that they were isolated remarks made on purely social occasions and did not reflect any vilification or a basis for finding of racial discrimination.

7.14 Regarding the termination of author's employment the State party submits that it was primarily due to the fact that he refused to do certain work, was unable to maintain good work relationships and created disruptive tension in the workplace by accusations against staff members. Furthermore, all three engineering officer positions were re-described and re-advertised in December 1993. The process commenced in May 1993, i.e., before the author made his complaints of 13 and 19 July 1993. His two colleagues were appointed to two of the re-described positions. The author did not apply.

7.15 The author alleges that he lodged two complaints of discrimination which were not investigated by NSWFB according to their grievance policy. Although it is clear that the complaints were not investigated strictly according to the NSWFB grievance policy, this does not, of itself, indicate that the author was victimized. However, it appears to have contributed to the finding by the EOT that the author had been victimized. It was the author's continued insistence that he would not carry out certain duties unless he was paid engineer's rates which was the primary factor which led to the Director General's decision to annul his probationary appointment. Another factor was that, although his annulment depleted the resources of the communications unit at a time of great activity and change, the Director General was aware that the author's continued presence was creating disharmony and adversely affecting the work performance of all involved. All officers in the Unit had become increasingly concerned that their every action and conversation was being scrutinized by him and recorded in a manner not consistent with workplace harmony.

7.16 The EOT considered that the author's complaints of racial discrimination significantly hardened his superior's views of him and were "a substantial and operative factor" upon the NSWFB adopting the view that he should be dismissed rather than seeking to resolve the issue by resorting to a grievance procedure. It also considered that although the NSWFB had stated, in a letter to the President of the ADB, that the author was dismissed because he refused to do certain work, the NSWFB had "subjected" the author "to a detriment, namely to termination of his employment without notice" because of his disciplinary allegations: this, in the tribunal's opinion, was contrary to Section 50 of the Anti-Discrimination Act 1977.

7.17 The State party concludes that the author has not provided any evidence that could justify his claims that the NSWFB violated articles 5 (c) and 5 (e) (i) in his appointment, during the course of his employment and the termination of his employment. As noted above and consistent with the evidence before the EOT, the selection committee concerned with the author's appointment to the NSWFB placed an emphasis on relevant local experience. This was on the basis that the engineering conditions and practices in Australia in relation to which the author was employed are significantly different to those conditions and practices in which the author had previously operated. For this reason the author's starting salary was $A 2,578.00 less than that of his colleagues. The EOT also found that there was no racial discrimination in relation to any aspect of the author's employment.

7.18 In the NSWFB and throughout every jurisdiction in Australia there are no restrictions to access to public service on the basis of race, colour, descent or national or ethnic origin. The New South Wales Government — like all jurisdictions throughout Australia — has a policy of Equal Employment Opportunity which actively encourages the recruitment of, *inter alia*, people from other than English-speaking backgrounds into the public service.

7.19 The State party submits that the communication does not raise an issue under article 3 of the Convention in relation to any aspect of his employment with the NSWFB, since there is no system of racial segregation or apartheid in Australia. It also submits, in relation to the author's allegations that the NSWFB failed to investigate his complaints according to the official grievance policy, that the author has not provided any evidence that the investigation of his grievance by his superiors at the NSWFB was an ineffective way to provide him with protection and remedies.

7.20 The State party reiterates that it is not the function of the Committee to review the findings of the EOT. That submission is based on jurisprudence of the Human Rights Committee in deciding cases under the Optional Protocol to the International Covenant on Civil and Political Rights. It is also analogous to the well established "fourth instance (*quatrième instance*)" doctrine of the European Court of Human Rights, that an application that merely claims that a national court has made an error of fact or law will be declared inadmissible *ratione materiae*. The evidence provided in the transcript of the hearing before the EOT and the EOT's judgement show that the authors allegations were carefully considered within the meaning of racial discrimination under the Anti-Discrimination Act, which in turn reflects the terms of the Convention, and were found to be unsubstantiated.

C. Observations concerning alleged violations of the Convention by the Anti-Discrimination Board, the Equal Opportunity Tribunal, the Ombudsman and the Legal Aid Commission

7.21 Regarding the author's complaint vis-à-vis ADB the State party submits that the author has failed to provide any evidence to demonstrate a casual connection between the ADB's acts and the alleged discrimination he suffered at work. When he lodged a complaint with ADB on 30 July 1993 he was already aware that he was about to lose his job. Accordingly, it could not have been "as a result" of the ADB's behaviour that the author allegedly suffered discrimination, hostile behaviour and lost his job. As for the complaint that ADB did not apply for an interim order to preserve his rights the State party contends that the power in s. 112 (1) (a) to preserve the status quo between the parties does not extend to preserving a complainant's employment.

7.22 As to the allegation that the ADB did not act promptly it is submitted that an ADB officer spoke with NSWFB on 10 August 1993 and asked if the NSWFB would delay the decision to dismiss the author until the ADB had investigated his complaint. The ADB had no power under the Anti-Discrimination Act to compel the NSWFB to reinstate the author. After the author advised the ADB that he was not proceeding with an appeal to GREAT because he did not want reinstatement, the matter was no longer considered by the ADB to be urgent, in accordance with the ADB's usual policy. Furthermore, there is no evidence that the ADB did not act impartially in considering the author's complaints. Indeed, it is clear from correspondence from the ADB and the Ombudsman that the conciliation officer complied with the ADB's usual procedures.

7.23 The author twice complained about the conduct of the ADB in investigating his complaint to the New South Wales Ombudsman. Each of the author's complaints was declined. The Ombudsman informed the author that he was declining to investigate the author's urgent complaint about the alleged delay of the ADB because he considered that the ADB had adhered to its usual procedure for dealing with urgent complaints. The State party submits that the author's claim against the ADB is manifestly ill-founded and lacking in merit.

7.24 As for the author's allegations concerning the EOT's handling of the hearing, the State party submits that it would appear from the transcript that, as is often the case with proceedings involving unrepresented persons and all the more so where the particular tribunal's *raison d'être* is the elimination of discrimination, the EOT went to great lengths to be fair to the author. The author obtained a fair and relatively long hearing (the proceedings took five days). In particular, the transcript indicates that the EOT:

- was very polite at all times to the author and assisted him with questions;
- granted the author leave to be assisted by a friend;
- invited him "not to hurry, there was plenty of time";
- protected him when giving evidence and allowed a witness to be recalled at the author's request;
- allowed the author to cross-examine one of NSWFB's witnesses for almost a whole day;
- on many occasions tried to assist the author to explain why events and actions were or were not based on race.

7.25 The author has failed to provide any evidence that the proceedings were unfair, or motivated or tainted in any way by racial discrimination, or that the EOT judgement was unjust. Accordingly, the proceedings before the EOT were neither in violation of article 5 (a) nor ineffective within the meaning of article 6.

7.26 Regarding the author's claim with respect to the Ombudsman, the State party explains that the author made two complaints in writing to the Ombudsman about the handling of his case by the ADB. The Ombudsman's Office declined to investigate because the author had alternative means of redress before the EOT. As explained to the author, because of the high number of complaints and the limited resources available to the Ombudsman to investigate them, priority is given to those matters which identify systemic and procedural deficiencies in public administration, where complainants have no alternative and satisfactory means of redress. The author's allegation that a government department "can get away with it" if there is an alternative means of redress available to the victim is illogical. If there is an alternative means available then the government department "cannot get away with it".

7.27 Furthermore, there is absolutely no evidence to support the allegation that the Ombudsman "colluded" with ADB officials. The preliminary inquiries undertaken by the Ombudsman disclosed that the conduct of the relevant ADB officer complied with the usual ADB procedure. In the absence of prima facie evidence of misconduct on the part of the ADB, the Ombudsman had no alternative but to decline to investigate the author's complaint. No amount of consultation with the author would have altered this fact.

7.28 In a letter dated 26 April 1995 the author wrote to the Ombudsman seeking a review of the decision. In that letter he had the opportunity to raise his specific objections to the decision to decline his complaint. He did not do so and merely reiterated his earlier complaint and outlined developments in the hearing of his matter by the EOT.

7.29 There has been no evidence submitted by the author that the decision of the Ombudsman was motivated or tainted by racial discrimination in violation of article 5 (a), or that this remedy was ineffective within the meaning of article 6.

7.30 As for the author's claims regarding the decision of the LAC to refuse his application for legal aid, the State party argues that the decision was made in accordance with the Legal Aid Commission Act and the Legal Aid Policy Manual, in a manner which treated the author no differently to any other person making an application for legal aid. The author was advised by the LAC that legal aid was not available for any person in respect of matters before the GREAT. The refusal of legal aid did not preclude the author from accessing and effectively conducting proceedings before GREAT. This body is designed to be used by unrepresented persons. Finally, it was the author's choice to pursue his complaint through the ADB and withdraw his proceedings before the GREAT, since he was not interested in reinstatement. Accordingly, the author has failed to provide any evidence that he was treated unfairly by the LAC in relation to his application for aid for legal representation before GREAT, or that lack of legal aid was the determinative factor in his decision to pursue a remedy through the ADB.

7.31 If the matter is one for which legal aid is available and the means test is satisfied, but there is some doubt concerning the merit, then, in accordance with the Legal Aid Commission Act, the LAC may cover the cost of obtaining an opinion from junior counsel on whether the applicant has reasonable prospects for success. On 28 March 1995, the LAC authorized the author to seek an opinion from junior counsel as to whether the proceedings before the EOT had reasonable prospects of success and the likely quantum of damages that might be awarded to the author. The solicitor expenses were paid by the LAC. However, it was finally found that the author's application did not satisfy the LAC's merit test. The author has failed to demonstrate how the LAC's decision to refuse him legal aid on the basis that his claim lacked merit was unfair or amounted to unequal treatment.

7.32 The author was advised in writing, in respect of the refusal of his application for legal aid to appear before the GREAT and of his application for legal aid to appear before the EOT that he could lodge an application to have each of these decisions reviewed by a Legal Aid Review Committee within 28 days. The author states that it was impossible for him "to comply with the EOT hearing dates and complete the LAC's appeal process. The LAC explicitly informed the author of s. 57 of the Legal Aid Commission Act which provides for the adjournment of proceedings by a court or tribunal pending the determination of an appeal by the Legal Aid Review Committee. The author did not lodge an appeal to the Legal Aid Review Committee in respect of either decision to refuse his applications for legal aid. The fact that the LAC advised the author of his right of appeal is further evidence that he was treated fairly.

7.33 The author's claim against the LAC is manifestly ill-founded and lacking in merit. The author has failed to provide any evidence that the LAC decisions to refuse the author legal aid for representation before GREAT or EOT were unfair or motivated or tainted in any way by racial discrimination and therefore in violation of article 5 (a), or that this remedy was ineffective within the meaning of article 6.

Author's comments

A. Allegations concerning violations of the Convention by the New South Wales Fire Brigade

8.1 With respect to the fact that the author was not appointed to two positions for which he had applied he disagrees with the State party's argument that understanding of local market was an essential criterion advertised or mentioned in the description for the position of Service Manager and states that during his employment he was given several tasks of local contract market and purchase. His application showed his skills and experience to carry out all the accountabilities mentioned in the job description for the two positions. Furthermore, he was more suitable than the person appointed as Service Manager, as he had a postgraduate training course in maintenance management and six years of experience in the management of emergency services communication. During his employment the author was assigned with one task of the Service Manager's position, i.e., the purchase of Test Analyser. He was less favourably treated on the ground of his racial background in that he was not even granted interview for both positions. Furthermore, it is not correct that he only complained over the selection process when he filed a complaint with the EOT in 1995. He did raise the matter in his submission of 15 December 1993 to the ADB.

8.2 The author does not fully agree with the State party's statement regarding the steps that led to his appointment as an engineering officer. As for his remuneration, he says it is not true that one of his two colleagues received the same salary as him. The EOT found that the colleague also received allowances by reason of being placed on a special "on-call" roster which gave him additional salary and permanent access to a car.

8.3 As for the probation issue the author argues that under section 28 (2) of the Public Sector Management Act, a person may be appointed to a position in the Public Service without being required to serve a probation period. Given his qualifications, skills and experience he could have been exempted from probation. The reason for not being exempted was based on racial considerations.

8.4 Concerning the workload he says that he had to work during the Easter holidays in order to complete a project that, given its complexity, took longer than what his supervisors suggested. He also says that his supervisor treated the migrant staff as second class citizens and that his regret and denial of discriminatory intent is untrue.

8.5 The author insists that he was segregated from the white officers on a trip to Melbourne in connection with a project he was working on and, for which, he had previously been sent to Sydney. As for training, the Fleet Mobile Communications course dealt with latest technologies in mobile radio communication. He was the most deserving employee of the NSWFB for his course, as he was made responsible for the radio communications projects. The cost of the course was not very high.

8.6 As for the State party's statement that the author did not apply when the position was re-advertised he states that, by then, he had already been dismissed. Applying would have meant that he had to compete, as an external candidate, with hundreds of other applicants. Furthermore it would have been useless. As the EOT found, the NSWFB was unwilling to employ him.

8.7 As for the State party's claim that the author had refused to carry out work assigned to him the author refers to the EOT judgement in which the tribunal was of the view that the incidents referred to by his superiors did not amount to clear refusal by the author. He also states that he did not refuse a lawful order or requested engineer's pay; the State party's allegations that he refused duties for money are baseless. With regard to the workplace harmony and productivity, there was no complaint against the author from any staff member, neither EOT found that there was any evidence that he created disruptive tension in the workplace.

B. Allegations concerning violations of the Convention by the Anti-Discrimination Board, the Equal Opportunity Tribunal, the Ombudsman and the Legal Aid Commission

8.8 The author states that when he requested the ADB to deal with his case on an urgent basis, as he feared he would be dismissed, the ADB limited itself to inform the NSWFB that a complaint had been lodged. ADB did not act promptly and deliberately delayed action until the dismissal took place. The author also argues that the ADB was unwilling to investigate his claims regarding "discrimination in appointment", in an attempt to minimize his prospects of success in the EOT and in seeking legal aid; indeed, the ADB's baseless findings that the author's complaint was lacking in substance undermined his prospects of success with other organs.

8.9 The author complains about the manner in which the EOT handled his case. He says, for instance, that it did not order the ADB to provide an officer to assist the enquiry, despite the fact that it could have done so under the provisions of the Anti-Discrimination Act; during the conduct of the enquiry the EOT gave advantage to the NSWFB; it further disadvantaged the author by conducting the hearing in public, reporting to the media and publishing the judgement; enormous amounts of duplicated documentation was given to him to read during the hearing, however, he was not given extra time to read it, except for a few minute adjournment; the transcripts of the five-day hearing show that he did not have sufficient time to cross-examine the six NSWFB witnesses; two of the witnesses brought by the NSWFB were migrants whose testimony in the witness box did not fully coincide with their affidavits; the EOT allowed the NSWFB to be represented by the Crown Solicitor against the unrepresented author without witnesses.

8.10 In its judgement the EOT justified the treatment of the author by the authorities as "unfair", "unfortunate", "exploitation", "adverse" etc., but failed to acknowledge the discriminatory impact and outcome on the author due to his different race to others in similar circumstances. The EOT failed to recognize the continuous pattern of unequal treatment between the author and the other two officers in the same circumstances and considered that the race base harassment in the workplace during duty hours were simple jokes on social occasions.

8.11 The author claims that his personnel file with the NSWFB was taken over by the EOT and he was not allowed to inspect it. The EOT judgement indicates that his personnel file contained a letter dated 4 May 1993 according to which he should be considered for further promotion at the end of his first year of employment. The author expressed doubts as to the authenticity of that letter and considers that it was "planted" by the EOT to justify its judgement that the NSWFB did not discriminate against him on racial grounds.

8.12 The author states that the Ombudsman abused her discretionary powers by declining to investigate his complaints and deliberately misinterpreting s. 13 of the Ombudsman Act, despite the fact that the author had identified systemic and procedural deficiencies in the ADB. She did not answer as to why she did not investigate the wrongdoings of the ADB officials. The Ombudsman is deliberately not understanding that in one instance the ADB "got away" by colluding with the NSWFB and declaring that the author's claim of victimization lacked substance. The victimization claim as later substantiated and NSWFB paid the damages, not the ADB. After receiving two complaints against a public administration, it is unfair that the Ombudsman was relying on the information or advice supplied by the same public administration and reporting it back to the author. The author sent a letter to the Ombudsman, dated 26 April 1995, in which he explained in detail the types of improper conduct by the ADB official. Furthermore, the Ombudsman failed to advise the author as to the kind of additional information she needed to reopen the case.

8.13 The author states that the report of the LAC's sponsored counsel and the LAC's decision to refuse legal aid were unfair, as the author was successful in establishing his case of victimization in the EOT. It is incorrect to say that the author had to choose ADB instead of GREAT because he was not interested in reinstatement. If he was not interested in reinstatement, why did he seek reinstatement through EOT? The real reason for his withdrawal from the GREAT appeal was the denial of legal assistance.

8.14 Finally, the author disagrees with the State party's observations regarding non-violation of article 2 of the Convention. He refers to the Committee's opinion on communication No. 4/1991, in which it is stated that "the Committee cannot accept any claim that the enactment of law making racial discrimination a criminal act in itself represents full compliance with the obligations of States parties under the Convention."[b]

Examination of the merits

9.1 The Committee has considered the author's case in the light of all the submissions and documentary evidence produced by the parties, as required under article 14, paragraph 7 (a), of the Convention and rule 95 of its rules of procedure. It bases its findings on the following considerations.

9.2 The Committee notes that the author's claims were examined in accordance with the law and procedures set up by the State party to deal with cases of racial discrimination. It notes, in particular, that the complaint was examined by the New South Wales Anti-Discrimination Board (ADB) first and by the Equal Opportunity Tribunal (EOT) on appeal. The EOT examined the author's claims regarding racial discrimination and victimization concerning his appointment, employment and dismissal. On the basis of the information at its disposal, in particular the text of the EOT's judgement, the Committee is of the opinion that the EOT examined the case in a thorough and equitable manner.

9.3 The Committee considers that, as a general rule, it is for the domestic courts of State parties to the Convention to review and evaluate the facts and evidence in a particular case. After reviewing the case before it, the Committee concludes that there is no obvious defect in the judgement of the EOT.

10. In the circumstances the Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination, is of the opinion that the facts as submitted do not disclose a violation of the Convention by the State party.

11. Pursuant to article 14, paragraph 7 (b), of the Convention, the Committee suggests that the State party simplify the procedures to deal with complaints of racial discrimination, in particular those in which more than one recourse measure is available, and avoid any delay in the consideration of such complaints.

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[b] CERD/C/42/D/4/1991, para. 6.4.

Annex IV

Documents received by the Committee at its fifty-fourth and fifty-fifth sessions in conformity with article 15 of the Convention

The following is a list of working papers submitted by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples:

Cayman Islands	A/AC.109/2102
Pitcairn	A/AC.109/2103
American Samoa	A/AC.109/2104
Falkland Islands (Malvinas)	A/AC.109/2105
Anguilla	A/AC.109/2106
Turks and Caicos Islands	A/AC.109/2107
Montserrat	A/AC.109/2108
Bermuda	A/AC.109/2109
British Virgin Islands	A/AC.109/2110
East Timor	A/AC.109/2111
Gibraltar	A/AC.109/2112
Guam	A/AC.109/2113
New Caledonia	A/AC.109/2114
Saint Helena	A/AC.109/2115
Tokelau	A/AC.109/2116
United States Virgin Islands	A/AC.109/2117
Western Sahara	A/AC.109/2118

Annex V

General recommendation concerning article 1 of the Convention

1. The Committee stresses that, according to the definition given in article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention relates to all persons who belong to different races, national or ethnic groups or to indigenous peoples. If the Committee is to secure the proper consideration of the periodic reports of States parties, it is essential that States parties provide as far as possible the Committee with information on the presence within their territory of such groups.

2. It appears from the periodic reports submitted to the Committee under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, and from other information received by the Committee, that a number of States parties recognize the presence on their territory of some national or ethnic groups or indigenous peoples, while disregarding others. Certain criteria should be uniformly applied to all groups, in particular the number of persons concerned, and their being of a race, colour, descent or national or ethnic origin different from the majority or from other groups within the population.

3. Some States parties fail to collect data on the ethnic or national origin of their citizens or of other persons living on their territory, but decide at their own discretion which groups constitute ethnic groups or indigenous peoples that are to be recognized and treated as such. The Committee believes that there is an international standard concerning the specific rights of people belonging to such groups, together with generally recognized norms concerning equal rights for all and non-discrimination, including those incorporated in the International Convention on the Elimination of All Forms of Racial Discrimination. At the same time, the Committee draws to the attention of States parties that the application of different criteria in order to determine ethnic groups or indigenous peoples, leading to the recognition of some and refusal to recognize others, may give rise to differing treatment for various groups within a country's population.

4. The Committee recalls general recommendation IV, which it adopted at its eighth session in 1973, and paragraph 8 of the general guidelines regarding the form and contents of reports to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/70/Rev.3), inviting States parties to endeavour to include in their periodic reports relevant information on the demographic composition of their population, in the light of the provisions of article 1 of the Convention, that is, as appropriate, information on race, colour, descent and national or ethnic origin.

1371st meeting
27 August 1999

Annex VI

Country rapporteurs

A. Country rapporteurs for reports of States parties considered by the Committee at its fifty-fourth and fifty-fifth sessions

Reports considered by the Committee	*Country rapporteur*
Austria Eleventh, twelfth and thirteenth periodic reports (CERD/C/319/Add.5)	Mr. Peter Nobel
Azerbaijan Initial and second periodic reports (CERD/C/350/Add.1)	Mr. Rüdiger Wolfrum/Mr. Michael P. Banton
Chile Eleventh, twelfth, thirteenth and fourteenth periodic reports (CERD/C/337/Add.2)	Mr. Luis Valencia Rodriguez
Colombia Eighth and ninth periodic reports (CERD/C/332/Add.1)	Ms. Gay McDougall
Costa Rica Twelfth, thirteenth, fourteenth and fifteenth periodic reports (CERD/C/338/Add.4)	Mr. Mario Jorge Yutzis
Dominican Republic Fourth, fifth, sixth, seventh and eighth periodic reports (CERD/C/331/Add.1)	Mr. Eduardo Ferrero Costa/ Mr. Luis Valencia Rodriguez
Finland Thirteenth and fourteenth periodic reports (CERD/C/320/Add.2)	Mr. Michael E. Sherifis
Guinea Second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh periodic reports (CERD/C/334/Add.1)	Mr. Mario Jorge Yutzis
Haiti Tenth, eleventh, twelfth and thirteenth periodic reports (CERD/C/336/Add.1)	Mr. Yuri Rechetov
Iran (Islamic Republic of) Thirteenth, fourteenth and fifteenth periodic reports (CERD/C/338/Add.8)	Mr. Theodoor van Boven
Iraq Fourteenth periodic report (CERD/C/320/Add.3)	Mr. Ion Diaconu
Italy Tenth and eleventh periodic reports (CERD/C/317/Add.1)	Mr. Ion Diaconu
Kuwait Thirteenth and fourteenth periodic reports (CERD/C/299/Add.16 and Corr.1)	Mr. Mario Jorge Yutzis
Kyrgyzstan Initial report (CERD/C/326/Add.1)	Mr. Luis Valencia Rodriguez
Latvia Initial, second and third periodic reports (CERD/C/309/Add.1)	Mr. Ion Diaconu

Reports considered by the Committee	*Country rapporteur*
Mauritania Initial, second, third, fourth and fifth periodic reports (CERD/C/330/Add.1)	Mr. Régis de Gouttes
Mongolia Eleventh, twelfth, thirteenth, fourteenth and fifteenth periodic reports (CERD/C/338/Add.3)	Mrs. Deci Zou
Peru Twelfth and thirteenth periodic reports (CERD/C/298/Add.5)	Mr. Régis de Gouttes
Portugal Fifth, sixth, seventh and eighth periodic reports (CERD/C/314/Add.1)	Mr. Ivan Garvalov
Republic of Korea Ninth and tenth periodic reports (CERD/C/333/Add.1)	Mr. Theodoor van Boven
Romania Twelfth, thirteenth, fourteenth and fifteenth periodic reports (CERD/C/363/Add.1)	Mr. Mario Jorge Yutzis
Syrian Arab Republic Twelfth, thirteenth, fourteenth and fifteenth periodic reports (CERD/C/338/Add.1/Rev.1)	Mr. Agha Shahi
Uruguay Twelfth, thirteenth, fourteenth and fifteenth periodic reports (CERD/C/338/Add.7)	Mrs. Deci Zou

B. Country rapporteurs for States parties which have seriously overdue reports and which were considered under the review procedure by the Committee at its fifty-fourth and fifty-fifth sessions

States parties considered by the Committee	*Country rapporteur*
Antigua and Barbuda Initial report has not been submitted	Mrs. Shanti Sadiq Ali
Central African Republic Seventh periodic report (CERD/C/117/Add.5)	Mr. Yuri Rechetov
Congo Initial report has not been submitted	Mrs. Shanti Sadiq Ali
Maldives Third and fourth periodic reports (CERD/C/203/Add.1)	Mr. Ivan Garvalov
Mozambique Initial report (CERD/C/111/Add.1)	Mr. Régis de Gouttes

C. Country rapporteurs for States parties considered under prevention of racial discrimination, including early warning measures and urgent action procedures, by the Committee at its fifty-fourth and fifty-fifth sessions

States parties considered by the Committee at its fifty-fourth session	*Country rapporteur*
Australia Special report (CERD/C/347)	Ms. Gay McDougall
Czech Republic Special report (CERD/C/348)	Mr. Ion Diaconu
Democratic Republic of the Congo	Mr. Luis Valencia Rodriguez
Rwanda	Mr. Theodoor van Boven
Sudan	Ms. Gay McDougall
Yugoslavia Special report (CERD/C/364)	Mr. Peter Nobel

States parties considered by the Committee at its fifty-fifth session	*Country rapporteur*
Australia	Ms. Gay McDougall
Democratic Republic of the Congo	Mr. Luis Valencia Rodriquez

Annex VII

List of documents issued for the fifty-fourth and fifty-fifth sessions of the Committee

CERD/C/60/Rev.3	Declarations, reservations, withdrawals of reservations, objections to reservations and declarations relating to the International Convention on the Elimination of All Forms of Racial Discrimination
CERD/C/298/Add.5	Twelfth and thirteenth periodic reports of Peru, submitted in one document
CERD/C/299/Add.16 and Corr.1	Thirteenth and fourteenth periodic reports of Kuwait, submitted in one document
CERD/C/304/Add.64	Concluding observations of the Committee on the Elimination of Racial Discrimination — Austria
CERD/C/304/Add.65	Concluding observations of the Committee on the Elimination of Racial Discrimination — Republic of Korea
CERD/C/304/Add.66	Concluding observations of the Committee on the Elimination of Racial Discrimination — Finland
CERD/C/304/Add.67	Concluding observations of the Committee on the Elimination of Racial Discrimination — Portugal
CERD/C/304/Add.68	Concluding observations of the Committee on the Elimination of Racial Discrimination — Italy
CERD/C/304/Add.69	Concluding observations of the Committee on the Elimination of Racial Discrimination — Peru
CERD/C/304/Add.70	Concluding observations of the Committee on the Elimination of Racial Discrimination — Syrian Arab Republic
CERD/C/304/Add.71	Concluding observations of the Committee on the Elimination of Racial Discrimination — Costa Rica
CERD/C/304/Add.72	Concluding observations of the Committee on the Elimination of Racial Discrimination — Kuwait
CERD/C/304/Add.73	Concluding observations of the Committee on the Elimination of Racial Discrimination — Mongolia
CERD/C/304/Add.74	Concluding observations of the Committee on the Elimination of Racial Discrimination — Haiti
CERD/C/304/Add.75	Concluding observations of the Committee on the Elimination of Racial Discrimination — Romania
CERD/C/304/Add.76	Concluding observations of the Committee on the Elimination of Racial Discrimination — Islamic Republic of Iran
CERD/C/304/Add.77	Concluding observations of the Committee on the Elimination of Racial Discrimination — Mauritania
CERD/C/304/Add.78	Concluding observations of the Committee on the Elimination of Racial Discrimination — Iraq
CERD/C/304/Add.79	Concluding observations of the Committee on the Elimination of Racial Discrimination — Chile
CERD/C/304/Add.80	Concluding observations of the Committee on the Elimination of Racial Discrimination — Latvia
CERD/C/304/Add.81	Concluding observations of the Committee on the Elimination of Racial Discrimination — Uruguay
CERD/C/304/Add.82	Concluding observations of the Committee on the Elimination of Racial Discrimination — Kyrgyzstan

CERD/C/304/Add.83	Concluding observations of the Committee on the Elimination of Racial Discrimination — Colombia
CERD/C/304/Add.84	Concluding observations of the Committee on the Elimination of Racial Discrimination — Azerbaijan
CERD/C/304/Add.85	Concluding observations of the Committee on the Elimination of Racial Discrimination — Dominican Republic
CERD/C/304/Add.86	Concluding observations of the Committee on the Elimination of Racial Discrimination — Guinea
CERD/C/309/Add.1	Initial, second and third periodic reports of Latvia, submitted in one document
CERD/C/314/Add.1	Fifth, sixth, seventh and eighth periodic reports of Portugal, submitted in one document
CERD/C/317/Add.1	Tenth and eleventh periodic reports of Italy, submitted in one document
CERD/C/319/Add.5	Eleventh, twelfth and thirteenth periodic reports of Austria, submitted in one document
CERD/C/320/Add.2	Thirteenth and fourteenth periodic reports of Finland, submitted in one document
CERD/C/320/Add.3	Fourteenth periodic report of Iraq
CERD/C/326/Add.1	Initial report of Kyrgyzstan
CERD/C/329/Add.1	Second, third and fourth periodic reports of Zimbabwe, submitted in one document
CERD/C/330/Add.1	Initial, second, third, fourth and fifth periodic reports of Mauritania, submitted in one document
CERD/C/331/Add.1	Fourth, fifth, sixth, seventh and eighth periodic reports of the Dominican Republic, submitted in one document
CERD/C/332/Add.1	Eighth and ninth periodic reports of Colombia, submitted in one document
CERD/C/333/Add.1	Ninth and tenth periodic reports of the Republic of Korea, submitted in one document
CERD/C/334/Add.1	Second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh periodic reports of Guinea, submitted in one document
CERD/C/336/Add.1	Tenth, eleventh, twelfth and thirteenth periodic reports of Haiti, submitted in one document
CERD/C/337/Add.1	Seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth and fourteenth periodic reports of Lesotho, submitted in one document
CERD/C/337/Add.2	Eleventh, twelfth, thirteenth and fourteenth periodic reports of Chile, submitted in one document
CERD/C/338/Add.1 and Rev.1	Twelfth, thirteenth, fourteenth and fifteenth periodic reports of the Syrian Arab Republic, submitted in one document
CERD/C/338/Add.3	Eleventh, twelfth, thirteenth, fourteenth and fifteenth periodic reports of Mongolia, submitted in one document
CERD/C/338/Add.4	Twelfth, thirteenth, fourteenth and fifteenth periodic reports of Costa Rica, submitted in one document
CERD/C/338/Add.5	Twelfth, thirteenth, fourteenth and fifteenth periodic reports of Ghana, submitted in one document
CERD/C/338/Add.7	Twelfth, thirteenth, fourteenth and fifteenth periodic reports of Uruguay, submitted in one document

CERD/C/338/Add.8	Thirteenth, fourteenth and fifteenth periodic reports of the Islamic Republic of Iran, submitted in one document
CERD/C/344	Provisional agenda and annotations of the fifty-fourth session of the Committee on the Elimination of Racial Discrimination
CERD/C/345	Submission of reports by States parties under article 9, paragraph 1, of the Convention for the fifty-fourth session of the Committee on the Elimination of Racial Discrimination
CERD/C/346	Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other Territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention
CERD/C/347	Special report of Australia
CERD/C/348	Special report of the Czech Republic
CERD/C/350/Add.1	Initial and second periodic reports of Azerbaijan, submitted in one document
CERD/C/363/Add.1	Twelfth, thirteenth, fourteenth and fifteenth periodic reports of Romania, submitted in one document
CERD/C/364	Special report of Yugoslavia
CERD/C/365	Compilation of general recommendations adopted by the Committee on the Elimination of Racial Discrimination
CERD/C/366	Provisional agenda and annotations of the fifty-fifth session of the Committee on the Elimination of Racial Discrimination
CERD/C/367	Submission of reports by States parties under article 9, paragraph 1, of the Convention for the fifty-fifth session of the Committee on the Elimination of Racial Discrimination
CERD/C/368	Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other Territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention
CERD/C/SR.1304-1332	Summary records of the fifty-fourth session of the Committee on the Elimination of Racial Discrimination
CERD/C/SR.1333-1371	Summary records of the fifty-fifth session of the Committee on the Elimination of Racial Discrimination

Annex VIII

Comments of the Government of Australia on decision 2 (54)* adopted by the Committee on the Elimination of Racial Discrimination on the special report of Australia

On 11 August 1998, the Committee requested the Government of Australia to provide it with information on changes recently projected or introduced to the 1993 Native Title Act, on any changes of policy as to Aboriginal land rights, and on the functions of the Aboriginal and Torres Strait Islander Social Justice Commissioner. The Committee acted under article 9, early warning measures and urgent action procedures, of the Convention.

The Committee made its views known on these matters on 18 March 1999. The Government of Australia expresses its concern with elements of those views. In doing so, the Government acknowledges the recognition by the Committee that the Government cooperated fully with the Committee, including by providing a detailed written submission and sending one of the Government's most senior legal experts on indigenous issues to appear before the Committee.

However, the Government of Australia was disappointed that the written views of the Committee did not record the substance of the Government's submission and evidence on key issues reported on by the Committee. The following comments seek to redress what the Government of Australia considers to have been the unfortunate omission of relevant material from the Committee's report that, by its absence, supports a point of view on the issues before the Committee which the Government contests.

As a general point, the Government of Australia does not believe that past discrimination against Australia's indigenous peoples in relation to their rights to land has endured. Indigenous land rights legislation operates in various states and territories of Australia. The Australian High Court has recognized the native title rights of Australia's indigenous people to their lands (in the *Mabo* (1992) and *Wik* (1996) decisions), and the Australian Parliament has enacted laws to protect those rights (in the *Native Title Act 1993* in response to the *Mabo* decision, as amended in 1998 in response to the *Wik* decision).

Amendments to the Native Title Act

The Committee raised concerns about the amendments made to the Native Title Act in 1998. The Government of Australia notes the views of the Committee, but does not agree with them. The High Court decision in *Wik* that native title could exist on pastoral lease land required the Government to reconsider some of the provisions of the original Act, which did not accommodate this possibility, and to deal with significant uncertainty as to the operation of the Act. This reconsideration was not arbitrary. Rather, the amendments proposed by the Government were a considered response to address specific situations, in particular where native title rights coexist with the rights of others. The Government did not accede to requests from significant sections of the community that it seek to extinguish native title rights on pastoral lease land. It rejected this option for a number of reasons, including its obligations under the Convention.

The issues raised by native title in Australia are complex. It is necessary to look at the *Mabo* and *Wik* decisions, and the overall substantive effect of the Native Title Act, and other relevant legislation and programmes, to consider the balance struck between native title rights and the rights of others. As the Committee acknowledges, the original Native Title Act balanced the rights of indigenous and non-indigenous title holders; the Government of Australia believes that the amended Act continues to maintain an appropriate balance between the rights of native title holders and the rights of others.

The Committee noted in particular four areas of concern in the 1998 Amendment Act.

The validation provisions inserted by the 1998 Amendment Act are much more limited in effect than the validation provisions in the Act passed in 1993, and in the Government's view were required by the *Wik* decision. The new provisions essentially allow for the validation of mining interests granted over pastoral lease land before the *Wik* decision, when it was assumed that native title could not exist on pastoral lease land. The validation of such mining interests does not extinguish native title. Compensation is payable for any effect on native title, and notification of the mining interests granted in the period is required to assist compensation claims.

The confirmation regime seeks to provide a much greater level of certainty in relation to the areas of land which are not subject to native title, and therefore the areas of land which can be claimed. It seeks to avoid lengthy, costly and adversarial litigation by allowing states and territories to clarify where native title has in the past been extinguished. The confirmation regime seeks to implement the common law position, expounded by the High Court in *Mabo* and *Wik*. The confirmation of extinguishment provisions only applies to about 21 per cent of Australia, leaving 79 per cent of Australia able to be claimed by native title holders.

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* See paragraph 21 of the present report.

The High Court in its decisions, the original Act, and the 1998 amendments recognized that past actions by governments could not be undone. However, the Government of Australia recognizes that present and future policies can seek to remedy the effects of such past actions, and a range of policies, including provisions of the Native Title Act, seek to do so.

Even where the confirmation provisions apply, the Amendment Act allows native title claims to be made in certain circumstances, including where other persons no longer have an interest in the land. The Parliament has established and funds the Indigenous Land Corporation and the Aboriginal and Torres Strait Islander Land Fund, which enables indigenous people, in particular those who are unable to claim native title, to purchase land by agreement with the current owner. The Land Fund will grow to a guaranteed capital base of $A 1.3 billion to enable such purchases to be made. In addition, indigenous land rights legislation exists in several states and territories of Australia, and this enables indigenous people who may not have native title rights to obtain land. These measures are designed to remedy historical dispossession and facilitate restitution.

The pastoral lease provisions seek to strike an appropriate balance between the rights of native title holders and the rights of pastoral lessees on pastoral lease land. On the basis of the *Wik* decision these two interests can coexist, but the rights of the pastoral lessee prevail. This is confirmed by the 1998 Amendment Act, which sets down some basic rules in relation to what things pastoralists can do, and what things pastoralists cannot do, where native title exists. The activities which pastoral lessees are able to undertake cannot extinguish native title. These amendments in fact prohibit pastoralists obtaining an upgrade of their lease to freehold or any exclusive tenure.

The Act also includes significantly expanded provisions in relation to agreements between native title holders and others, including pastoralists. The Government hopes that these provisions will be used by native title holders and pastoralists to establish agreed arrangements for coexistence on pastoral lease land.

When the right to negotiate was developed, the assumption was that native title would exist principally on vacant Crown land in Australia and would therefore amount to "ownership" rights in relation to that land. On that assumption, and reflecting the special relationship of native title holders (and also claimants) to their land, the right to negotiate set out certain procedures to be followed before mining grants could be made or some compulsory acquisition of land by government undertaken. The Government's position is that the full right to negotiate is not appropriate in relation to pastoral lease land that native title holders share with pastoralists, and that there should be more parity between the rights of native title holders and the rights of pastoralists.

The 1998 Amendment Act therefore allows state and territory parliaments to put in place alternative regimes to the right to negotiate on pastoral lease land. Such regimes must meet specified criteria which recognize the particular interests of native title holders and require consultation and a right to object to the mining or acquisition. These regimes are also subject to Commonwealth parliamentary scrutiny.

In addition to these four areas, the Native Title Act, as amended in 1998:

> Recognizes and protects the native title rights of Australia's indigenous people to their land;
>
> Allows native title to be claimed over about 79 per cent of Australia's land. The Commonwealth Government provides funding for such claims. They are determined by agreement of the relevant parties, or by an independent judicial process which emphasizes mediation; and
>
> Significantly limits any future extinguishment of native title. Generally, native title can only be extinguished in the future by agreement with the holders, or by a wholly non-discriminatory acquisition process that also applies to others with interests in the land.

Therefore, the Government of Australia believes there is no breach of the Convention by the Native Title Act.

Process of consultation

Australia cannot see any basis for the suggestion that article 5 (c) of the Convention was not complied with in relation to the 1998 Amendment Act. Indigenous Australians have the same high level of political rights as all other Australians. There were significant consultations between the Government and indigenous Australians in relation to the 1998 Act, including several with the Prime Minister, as there were with other interests. The 1998 Amendment Act was made by the democratically elected Parliament of Australia in a prolonged and open process. During detailed consideration of the 1998 amending legislation by the Parliament, significant amendments were made that addressed many indigenous concerns.

"Suspension" of the Act

The Government of Australia cannot simply suspend the implementation of the 1998 Act, as suggested by the Committee. The Act was made by the Parliament of Australia and operates as the law of Australia, to which the Government is subject. The constitutional validity of the Act can be challenged in Australian courts, though no such action has been taken yet, and its operation will be determined by those courts.

Aboriginal and Torres Strait Islander Social Justice Commissioner

As the Committee was advised, Dr. William Jonas has been appointed as Aboriginal and Torres Strait Islander Social Justice Commissioner. The proposed restructuring of the Human Rights and Equal Opportunity Commission, to confer the current functions of the Commissioner on the Commission as a whole, is not discriminatory in any way. The same change is proposed for all specialist commissioners. All the current functions of the Commissioner with respect to the human rights of indigenous Australians will be given to the restructured Commission. The Government believes the restructured Commission will be better able to address the full range of issues regarding indigenous Australians.

Overcoming disadvantage

The Australian Government's overall priority in indigenous affairs is to support Aboriginal and Torres Strait Islander people to overcome a history of disadvantage within Australian society, through a combination of initiatives designed to address health and welfare needs, while encouraging economic development and self-reliance.

A concerted effort is being made to pursue tangible improvements in the critical areas of indigenous health, housing, education and employment. The Government is funding strategies which encourage commercial enterprise and long-term self-reliance, rather than perpetuating welfare dependency. Australian Government spending on indigenous specific programmes is now at an historic high level in real terms.

In the area of health, the Government has centred its efforts on establishing and expanding health services in rural and remote communities. These services provide improved daily health care for indigenous people and enable indigenous communities to take control of local health outcomes. Similarly, government-funded indigenous-specific education programmes assist indigenous students to pursue higher education, thereby improving their prospects of obtaining employment in the mainstream employment market. The Government also funds numerous business development programmes for indigenous Australians to assist them to achieve lasting economic independence.

The results of these policies are clearly evident in basic socio economic data showing improvements in indigenous health, stronger educational outcomes, better housing and greater home ownership, and increasing numbers of indigenous people in skilled and professional occupations.

The Government recognizes the importance of land in providing opportunities for greater social and economic development, as well as for fostering the maintenance and development of culture. In addition to the recognition of common law native title rights since 1992, many Australian jurisdictions have enacted legislation over the last three decades (as noted above) which provides for land claims and, in many instances, enables indigenous people to be involved in decision-making about land management and heritage protection. As already noted, there is also (and has been for the past 25 years) a programme of government-funded land purchases principally for the benefit of those indigenous people unable to avail themselves of native title or statutory claims processes. Fifteen per cent of the continent is currently owned or controlled by Aboriginal and Torres Strait Islander people.

National reconciliation is also at the forefront of Australia's indigenous affairs agenda.

The Council for Aboriginal Reconciliation coordinates strategies to enhance the relationship between indigenous people and the wider Australian community, with the aim of achieving a formal statement of reconciliation by 2001. The Council has recently released a draft declaration, and four proposed strategies to advance reconciliation, as a basis for public discussion. The Government has launched a national campaign through which community organizations will develop projects to promote harmony between people and groups of different cultural backgrounds.

In summary, the Government's approach in indigenous affairs seeks to overcome disadvantage and support the genuine aspirations of indigenous people to achieve greater self-sufficiency. It aims to ensure that all Australians share equally in a common future which will form the basis of a lasting reconciliation.

Annex IX

Comments of the Government of the Islamic Republic of Iran on the concluding observations* adopted by the Committee on the Elimination of Racial Discrimination on the thirteenth, fourteenth and fifteenth periodic reports of the Islamic Republic of Iran

1. The Government of the Islamic Republic of Iran expresses its gratitude for the opportunity provided for a good, transparent and fruitful dialogue between its delegation and the members of the Committee on the Elimination of Racial Discrimination during the consideration of its thirteenth, fourteenth and fifteenth periodic reports on the Convention on the Elimination of All Forms of Racial Discrimination at the 1338th and 1399th meetings of the Committee, held respectively on 3 and 4 August 1999.

2. The Government of the Islamic Republic of Iran appreciates the recognition by the Committee in section B of the concluding observations of the efforts made by it to implement all provisions of the Convention.

3. The Government of the Islamic Republic of Iran expresses its regret that despite the readiness of its delegation to present comprehensive information on all the questions raised by the Committee members, the inadequate time allocated to the consideration of the report did not permit some questions and issues to be duly addressed. We remain confident that the full response to those questions could to a great extent remove the grounds for the limited concerns of the Committee reflected in section C of the concluding observations.

4. Nevertheless the comprehensive responses to all unanswered questions as well as other information requested by the Committee during the last meetings will appear in the next periodic report of the Islamic Republic of Iran to the Committee.

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* See paragraphs 294-313 of the present report.

Annex X

Comments of the Government of Latvia on the concluding observations* adopted by the Committee on the Elimination of Racial Discrimination on the initial, second and third periodic reports of Latvia

With regard to the Committee's observation (paras. 395 and 404) that there are residents who are in a discriminatory position in applying for citizenship, the Government of Latvia once again wishes to stress that it is important to examine the question of citizenship within the context of the forcible and illegal incorporation of Latvia into the USSR, as a consequence of which its statehood for a limited time existed only *de jure*.

The persons who settled in Latvia during the period of its existence only *de jure* are not deprived of the right to citizenship. Latvia has recognized it in the sense of the right to acquire citizenship through naturalization.

The Government challenges the observation that the naturalization procedure may not be easy enough. The OSCE High Commissioner for National Minorities, Mr. Max van der Stoel, was one of the Government's main counterparts in dealing with the question of naturalization tests and other specific issues. On 11 January 1999 he publicly expressed his satisfaction with the current state of affairs as to the citizenship issue and stated that no recommendations in that respect would follow.

The Government's view is supported by the statistics, which are self-explanatory — 95.6 per cent and 96 per cent, respectively, of the applicants for naturalization pass the language and the country's history test at the first attempt. The State party wishes the Committee to take note of this fact.

The Government wishes to draw the attention of the Committee to the contradiction between paragraph 389 and paragraphs 397 and 406 of the concluding observations. In one the Committee notes that restrictions that had been applied to non-citizens have been lifted, but in the others refers to reports which allege the existence of unjustified differences between citizens and non-citizens. Under the provisions of general recommendation XI of the Committee, the Government accepts the debate on the question of non-citizens and has shown its good will in doing so during the presentation of the report. Nonetheless, the Government wishes to stress that such a discussion should be based upon reliable information. Therefore, the Government challenges the validity of the source of information the Committee is referring to.

The Government wishes to stress that former USSR passports will become null and void in Latvia as from 1 January 2000. To the contrary of what is suggested in the general comments (para. 398), they are still valid in Latvia, so that the holders of former USSR passports can freely travel to those countries that recognize this passport as valid for travel and they can also freely return to Latvia. It should also be emphasized that, contrary to what is suggested in the Committee's observations, the pace of issuance of the new internationally recognized travel documents to Latvian non-citizens cannot be considered slow, since at the time of the session of the Committee 72 per cent of all non-citizens in Latvia had already received passports. The remaining non-citizens are constantly encouraged through the prime public information media to apply for the new passports.

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* See paragraphs 384-414 of the present report.

Annex XI

Comments of the Government of Mauritania on the concluding observations* adopted by the Committee on the Elimination of Racial Discrimination on the initial to fifth periodic reports of Mauritania

[Original: French]

The Committee's concluding observations are unbalanced since they are based mainly on allegations made by the Rapporteur, Mr. Régis de Gouttes, despite the clear, frank and complete answers provided by the Mauritanian delegation at the 1341st meeting, held on 6 August 1999.

However, the Rapporteur only reproduced allegations drawn from the report of the State Department of the United States and other even more questionable sources. These allegations have never been supported by any documented proof, which the Mauritanian authorities would have examined and dealt with promptly.

Mauritania is, however, an obvious target for all those who cannot conceive of a multicultural and multi-ethnic society in Africa without any ethnic antagonism, even when, as in this case, such antagonism has never been part of the history of the country.

The delegation has amply proved this in the replies it provided, which cited specific concrete facts and examples, and this did not prevent the Committee from commending, in paragraph 323, the efforts made by the State to protect "the most vulnerable ethnic groups".

Those who know Mauritania even a little know that there are no "vulnerable ethnic groups" but rather vulnerable strata in all the communities (Arab, Pular, Soninke and Wolof). These communities, both Arab and non-Arab, had the same social stratification in the traditional economy and their sociological evolution has been identical: they now consist of affluent strata, middle-class strata and underprivileged strata.

In paragraph 329, the Committee notes that "some groups of the population, especially the black communities, are still suffering from various forms of exclusion and discrimination, especially where access to public services and employment is concerned".

Such practices have quite simply never existed in Mauritanian society so that one cannot now speak of their persistence.

Pre-colonial Mauritanian society was composed of tribes, kingdoms, emirates and villages which each controlled a relatively precise area and which had relations with each other, although those relations were never of a dominating or discriminatory character.

The colonial Power established an administration which was imposed on all these entities and which could not be suspected of having perpetuated relations "of exclusion and discrimination" against the black communities since, on the one hand, such relations never existed and, on the other, these communities benefited the most from certain advantages resulting from the colonial system.

The modern Mauritanian State has, itself, been working on consolidating the bases of national cohesion and unity and, today, the democratization of public life guarantees to each individual his fundamental rights of representation and representativeness thanks to universal suffrage and model management of institutions and of social space.

The Constitution of 20 July 1991 proclaimed such rights and established an appropriate institutional framework: a State subject to the rule of law.

In this State subject to the rule of law there are some 20 political parties, more than 500 non-governmental associations, three trade-union confederations and approximately 20 independent newspapers.

The judicial authorities, the Mediator of the Republic and the office of the Commissioner for Human Rights, have been working on poverty alleviation and on introducing offers of various forms of recourse for citizens in the event of abuse of authority.

The allegation taken up by the Committee which speaks of "exclusion ... where access to public services and employment is concerned" would be a serious one if it did not demonstrate a total lack of knowledge of the reality in Mauritania:

Contrary to a dualistic vision — the Arabs on one side and the non-Arabic-speaking communities on the other — centuries-old links of a complementary nature and a great deal of interbreeding have united the various Mauritanian communities and these links have been solidified by a common religion and the struggle for a common destiny.

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* See paragraph 321-336 of the present report.

Throughout history, alliances have been forged between clans and camps representative of all these communities to fight similar coalitions. Moreover, skin pigmentation has never constituted a criterion of any kind in Mauritanian society since families descended from ancient noble Arab groups are black while significant fringes of the Peule community have a pale skin.

There are no areas or regions or even districts in Mauritania inhabited by only one community and it would be ridiculous to claim that the school or clinic in a village, encampment or district gives priority to children or people belonging to a given community.

The intensive efforts made by the Mauritanian Government to alleviate poverty and the measures it has taken in areas such as education, literacy, health, employment, housing and the advancement of women are carried out openly and in close collaboration with the competent agencies and organizations of the United Nations system.

The Committee should have based its comments on the reports of those agencies and organizations instead of relaying unfounded and unjust allegations.

In the same paragraph, the Committee notes that "in some parts of the country, vestiges of practice of slavery and involuntary servitude could still persist":

Admittedly, the Committee took the precaution of putting this phrase in the conditional, but the delegation had dwelt at such length on this question that it had thought it had removed any misunderstanding on the subject.

The Committee should simply note that there are no areas in Mauritania in which the rule of law does not prevail where such an abominable practice as slavery could persist and even flourish with impunity.

Mauritania belongs to a geographical area where slavery was effectively practised in the forms described by the delegation in its oral reply on 6 August. This phenomenon has not, however, left any stronger marks in Mauritania than elsewhere and it is unfair to single out Mauritanian society for the simple reason that it is biracial. All the more so in that the mission of enquiry of the Subcommission on Prevention of Racial Discrimination and Protection of Minorities carried out in 1984 — on the initiative of the Mauritanian Government — proved, first, that this phenomenon had never been of a racial character in Mauritanian society because it had been practised in all sections of society and, second, that it had disappeared as an institution.

The vestiges which former high Mauritanian dignitaries freely trade on because they are no longer involved in affairs are simply the expression of a set of relationships, the product of an aggregate of factors, which include loyalty, alliances, kinship, neighbourliness or a modern type of salary relationship. Such relationships are not characteristic of Mauritanian society; they are — on the other hand — frequent in other countries.

In Mauritania, as in any other country, there is no more effective way of eradicating the vestiges of the former social configuration than the dissemination of education, in particular through universal schooling. Mauritania is on the point of achieving this as is shown by its high rate of school attendance (over 87 per cent).

The goals of the national poverty alleviation programme submitted by the delegation — in particular, those of meeting the basic social needs and promoting employment and revenue-generating activities — the reinforcement of the rule of law and the national strategy for the promotion of human rights are all directed towards accelerating social progress and the emancipation of the most underprivileged strata of society.

In paragraph 333, the Committee encourages the Mauritanian State to intensify its efforts to promote the various national languages:

Mauritania plays a pioneer role in this field, despite the fact that these languages are spoken by a majority of people in other countries of the subregion.

The Mauritanian Government will, however, pursue its efforts in that direction in accordance with the constitutional provisions which recognize the cultural rights of non-Arabic-speaking minorities.

This decision attests to a genuine political will to preserve and consolidate national unity on a firm foundation, based on the preservation of the rights of all, in justice and equity.

The Committee's conclusions have not reflected all these efforts, nor these tangible facts.

They do not even reflect the debate which followed the submission of the report and give the impression that the fruitful dialogue and productive discussion of 5 and 6 August (para. 322) have not been duly taken into account and that the Committee has based itself solely on the report of Mr. de Gouttes.

Despite this, Mauritania remains fully committed to the International Convention on the Elimination of All Forms of Racial Discrimination and remains determined to consolidate still further the rule of law and to promote economic and social progress for all its citizens, without distinction as to origin, race, sex or social status.